THE WATERWAYS OF NEW JERSEY

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WATERWAYS

OF

NEW JERSEY

History of Riparian Ownership

AND

Control Over the Navigable Waters of New Jersey

BY

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INTRODUCTION

New Jersey, located so that practically all the overland traffic between the New England States and those of the Middle and Southern sections must pass over or through her territory, possesses a unique position in regard to transportation in the United States. Nine of the important transcontinental trunk lines have their tide water terminals on the New Jersey side of New York bay. Every county in the State has been provided by Nature with some means of water transportation, either by having a river, an arm of the sea, a canal, or the ocean within or along its boundary.

While investigating the numerous questions connected with the ownership of lands under tide water and the control over navigable waterways in the State of New Jersey, the writer was unable to locate any work in which this subject had been adequately and comprehensively treated. The titles to lands under tide water in New Jersey are at variance with the prevailing custom in other States, and of the numerous court decisions upon this specific subject very few have any direct application to the situation as found in New Jersey. The laws which were passed in the several colonies during the ante-Revolutionary days were based upon the conditions contained in the original patents from the English Crown, or the subsequent transfers by grants to individuals or colonization companies. In the case of several of the Western

States in which the title to the land rested in the United States, prior to their admittance into the Union, special conditions relating to waterways, or the use of waters of navigable streams, have been included in their constitutions, and the situation is thus much clarified, but in New Jersey it has required long litigation to finally settle the status of these lands.

Aside from the very valuable monograph "Hudson County—Its Waterfront Development" by John C. Payne, Secretary and Engineer of the Riparian Commission of the State of New Jersey, all of the information relating to New Jersey's waterways is scattering and necessitates a considerable amount of delving to locate any particular feature. Among the sources of information, the Riparian Commission reports, the several State and County histories, the opinions of the Attorneys General, as well as the decisions of the Courts of New Jersey and of the United States were found to be the most valuable.

The first question encountered in this study is that relating to the history of the grants of lands—upland and tidal—and the subsequent reversion of certain of these rights to the Crown, upon the surrender of governmental authority by the Proprietors. As this has a direct bearing upon the future administration of the lands under water and the legal questions involved, a careful study of the essential points becomes necessary. For much information relating to this phase of the early history of New Jersey, the New Jersey Archives furnish authentic and valuable data and have been fully quoted.

Subsequent control and development of the State's waterways follow in logical order, as well as the point at which the Federal Government steps in and exercises jurisdiction over certain features of the matter.

The data contained in the following work was collected by the author solely for his own use while prosecuting certain investigations in connection with the waterways of New Jersey. This work has been a "labor of love," animated by a desire to see New Jersey make the most of her most valuable asset—her waterways.

Every effort has been made to eliminate errors in the quotations and to give due credit for each extract or statement contained in the following pages. While the author realizes the many shortcomings in this book, it is hoped that its publication may be the means of showing the needs of a more intelligent and generous policy by those in authority towards the development of waterways in New Jersey.

Grateful acknowledgment is due to Mr. L. T. Derousse for the very comprehensive index, which makes it possible to quickly locate any particular phase of the riparian question discussed in these pages, and also to Mr. E. A. Ransom, Jr., for valuable suggestions.

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Waterways of New Jersey

History of State Ownership in Riparian Lands

The territory of New Caesarea, or New Jersey, was successively in the hands of the Dutch, Swedes and English, and the imprint of each of these nations is still to be found in its customs, laws and names. In order that a clear understanding can be had of the basic principles upon which the various questions relating to the lands bordering on navigable waterways are founded, it is necessary to study briefly the history of the country and the successive steps of government. Land titles in New Jersey rest upon, or are traced to, the following sources:

1. Through purchase from the Indians.
2. From the Swedes.
3. From the Dutch.
4. Governor Nicolls grants.
5. From the Lords Proprietors.
6. From the East Jersey Proprietors.
7. From the West Jersey Proprietors.

Of these, the titles which have, however, stood the test of all courts are the ones founded upon patents or grants from the Proprietors. All of the others have at one time or another been contested, and, while an adverse judicial decision has not been given in every instance, the absolute and perfect title is lacking.

In 1497-1498 Jean and Sebastian Cabot, then in the service of Henry VII., the King of England, having discovered New Foundland, sailed along the coast of North America from Labrador to Florida. They claimed for their sovereign the entire territory along which they sailed, and this discovery is the basis upon which the English right to proprietorship to the country along the Atlantic coast is founded.

Some time afterwards the French, Dutch and Swedes, either through discovery, or actual settlement, laid claim to part, or all, of the territory now embraced in the State of New Jersey. The French claim was founded upon the voyage of Verrazano, sailing under the flag of Francis I. The Dutch laid claim to what is now New England and the Middle States through voyages by several navigators, principally those under commissions from the Greenland Company, the Dutch East India Company and the Dutch West India Company, especially the explorations of Henry Hudson and Cornelius Jacobsen May. The Swedish claim was founded upon actual settlement under the leadership of Peter Minuit, who had formerly been Director-General of New Netherland, but had quarrelled with the Dutch West India Company.

Such then are the premises upon which the basic claims of the several nations competed for a foothold in the newly discovered and still undeveloped continent. The French never effected any settlements within the territory under discussion. The Dutch mission in America was trade, and successful trade necessitated peaceful relations between the parties engaged in trafficking. The Swedish settlement was also projected as a profit making

proposition. Such was the constant object of the first Dutch and Swedish settlers, with the result that they were not prepared to withstand the aggressive attacks made by the English Crown, when it finally awoke to the possibilities of the New World.

Queen Elizabeth, in 1584, by patent, granted to Sir Walter Raleigh authority to discover, occupy and govern "remote, heathen and barbarous countries," not previously possessed by any Christian prince or people. This was entirely ignored by King James when, in 1606, he granted new patents to two joint stock companies, respectively known as the London, or Virginia, Company, with territorial jurisdiction from 34° to 38° north latitude, and the Plymouth, or North Virginia Company, from 41° to 45° north latitude. The intervening territory was to go to the company which should first plant a self supporting colony. The patents of both of these companies, however, were revoked between 1624 and 1635, the sovereignty being again vested in the King. England was, however, in the throes of disquietude and even civil war and in no position to carry on a colonization policy. However, with the exit of the Cromwells, Oliver and Richard, and the restoration of the Stuart dynasty, the question of reward to those who had been firm adherents and active participants in the cause of Charles II. became a problem. The King turned to the new world as a promising field from which to repay his faithful followers. In this connection we need to consider only the grants as far as they relate to the province of New Jersey.

Proprietary Period

The patent dated March 12, 1664, from King Charles II. to his brother James, the Duke of York, was the first enduring legal separation of the soil of what was to be New Jersey from the English Crown. This grant included all that tract of land extending along the sea coast between the west side of the Connecticut River and the east side of Delaware Bay, together with all the islands between Cape Cod, the Narrows and Hudson River, including Martha's Vineyard and Nantucket. The northern and western boundary was a line from the head of the Connecticut River to the head of the Hudson River, thence to the course of the Mohawk River and finally to the east side of Delaware Bay.

The original patent, after describing the details of the conveyance, continues:

> "togeather with all the lands Islands Soyles Rivers harbours Mynes Mineralls, Quarries Woods Marishes Waters lakes fishings hawking hunting & fowling and all other Royalties profitts com'odities & hereditaments to the said severall Islands lands & p'misses belonging & apperteyning with their and every of their app'ten'nces and all our estate right title Interest benefit advantage clayme & demand of in or to the said lands & p'misses or any parte or p'cell thereof and the revert'on & revert'ons remainder & remainders togeather with the yearly & other the rents reven'ues & p'fitts of all & singular the said p'misses and of every part & parcell thereof To have & to hold all & singular the said lands Islands hereditaments & p'misses with their & every of their app'ten'nces hereby given & granted or here-

> in before ment'oned to bee given & granted vnto our said dearest brother James Duke of yorke his heires & assigns forever."[1]

It will be noted that the patent gave the Duke of York absolute authority to govern the province, including the right to establish such laws and ordinances as were necessary therefor. The only restrictions to such absolute control being that "the said Statutes ordinances & proceedings bee not contrary to the Lawes Statutes & governm't of this our Realme of England And saveing & reserving to vs, our heirs & Successors" the right of receiving and hearing appeals of all persons, "of in or belonging to the Territories or Islands aforesaid."

It must be further noted that at the time the grant from Charles II. was made to the Duke of York, the Dutch were in actual possession of the lands covered by this patent. However, in 1667, by the treaty of Breda, this was ceded to the King of England.

On June 23, 1664, James, the Duke of York, leased for one year to Lord John Berkeley and Sir George Carteret, two favorites of the House of Stuart:

> "All that Tract of Land adjacent to New England and Lying and being to the Westward of Long Island and Manhitas Island and bounded on the East part by the Maine Sea and part by Hudsons River and hath Vpon the West Delaware Bay or River extendeth Southward to the Maine Ocean as farre as Cape May at the mouth of Delaware Bay or River of Delaware which is in fourty one degrees and

[1] New Jersey Archives (first series) vol. I, p. 4. (Note lack of punctuation.)

> fourty minutes of Lattitude and Crosseth over thence in a Straight Line to Hudsons River in fourty one degrees of Lattitude which said Tract of Land is hereafter to be called by the name or names of New Cesarea or New Jersey[1] and also all Rivers mines mineralls Woods fishings hawking hunting and fowling and all other Royalties proffitts comodities and hereditam'ts whatsover to the said Lands and premisses belonging or aperteyning with their and every of their apertenences and the Revercon and Revercons Remainder and Remainders thereof."

The consideration of this lease was ten shillings and subject to the rent of a peppercorn.

On June 24, 1664,[2] the above lease was converted into a permanent grant, the consideration being the payment of twenty "nobles" of lawful money of England, if the same shall be lawfully demanded.

The difference in the form of the Letters Patent from the King to the Duke of York and the latter's conveyance to Lord Berkeley and Sir George Carteret should be carefully noted. The patent from the King was an absolute indefeasible conveyance in fee simple, while the other took the form of a "Lease and Release." The one granted to Berkeley and Carteret stated that it was made "in as full and ample Manner as the same is graunted to the sayd Duke of Yorke by the before recited Letters Pattents" (the King's grant). The land title received by the Lords Proprietors, Berkeley and Carteret, has

[1] So named in honor of Sir George Carteret, formerly Governor of the Isle of Jersey. Whitehead, in "East Jersey, under the Proprietors," says, "the people preferred the English name New Jersey and the other, New Caesarea, was consequently soon lost."

[2] New Jersey Archives (first series) vol. I, pp. 10-14.

seldom been questioned, in so far as they referred to the upland, but the grant of sovereignty, which was also included, and of title to the rivers and bays and to the lands under water has been declared, by many authorities, to have, according to old English law, no substantial legal standing.

These two proprietors on February 10, 1665,[1] published the now famous "The Concessions and Agreements of the Lords Proprietors of the province of New Caesarea or New Jersey, to and with all and every of the adventures, and all such as shall settle or plant there." This was the first constitution of New Jersey and continued in effect until 1676. They also appointed Phillip Carteret as their representative and as the first proprietary governor of the territory included within their patent.

In order that the settlement of the province might be more speedily promoted the Concessions contained provision for the granting of lands to settlers, or prospective immigrants, as follows:

(*a*) To every person already in New Jersey, or who should transport himself thither with the first governor before January 1, 1665-1666, or meet the governor upon his arrival, and "armed with a good Muskett boare twelve bulletts to the Pound, with Tenn pounds of powder and Twenty pounds of Bulletts, with bandeleers and match convenient, and with six months' provisions for his own use," 150 acres of land, English measure.

(*b*) For every able man servant that he should carry with him and armed and provided as above, 150 acres of land.

[1] New Jersey Archives (first series) vol. I, pp. 28-43.

(*c*) To every one who should send servants at that time, for every able man servant armed and provided as above, 150 acres of land.

(*d*) For every weaker servant or slave, male or female, exceeding the age of fourteen years, which any one should send or carry, 75 acres of land.

(*e*) To every Christian servant, exceeding fourteen years of age, after the expiration of their time of service, 75 acres of land for their own use.

(*f*) To every master, or mistress, sailing before the first day of January 1665-6 armed and provided as above, 120 acres of land.

(*g*) For every able bodied man servant which he, or she, should carry, or send, 120 acres.

(*h*) For every weaker servant or slave exceeding 14 years of age 60 acres.

(*i*) For every Christian servant to their own use 60 acres.

For the second year, down to January 1, 1666-67, the offer was 90 acres for masters and able bodied servants; 45 acres for weaker servants and as a servant's reward. For the third year down to January 1, 1667-68, the corresponding amounts were 60 acres and 30 acres.

All lands were to be taken up by warrant, from the proprietary governor, and confirmed, after survey, by the governor and council, under a seal to be provided for that purpose. A penny per acre for lands in towns or half-penny per acre for lands outside of town bounds, according to the quality of the land, was reserved to the proprietors annually as quit-rent. These lands were called "headlands."

All lands were to be held subject to the condition that for the ensuing 13 years, one able bodied servant, or two weaker ones were to be maintained upon every 100 acres. If these conditions were not fulfilled, the proprietors were to have the right after a space of three years, due notice having been given, to dispose of the lands to other parties, unless the assembly of the colony should judge that, owing to poverty or other causes, the grantee was unable to fulfill this condition.

Almost immediately after the patent had been obtained from Charles II., the Duke of York commissioned Colonel Richard Nicolls deputy governor of the *entire territory included in the patent* with authority "to perform and execute all and every the Powers which are by the said Letters Patents granted unto me." The date of this commission was April 2d, 1664-5 and the powers granted were so absolute that as long as he acted in accordance with orders and instructions received directly from the Duke, all of his lawful acts were undoubtedly binding upon his principal.

According to the commission of Governor Nicolls, his jurisdiction included the country which was subsequently conveyed to Berkeley and Carteret and frequent controversies arose as to the respective authority of the royal governor and the proprietary governor.

In the middle of April following the date of grant to the Duke, Governor Nicolls accompanied an expedition sent to America under Admiral Sir Robert Carre to recover the country from the Dutch. The fleet arrived at New Amsterdam August 28th and on September 3d the Dutch Governor, Peter Stuyvesant, surrendered the fort

and province under his government. The fleet under Carre then proceeded to attack the settlements on the Delaware River and these were reduced with little resistance.

In order that the country over which he had been appointed deputy governor might be made to produce AN INCOME FOR THE DUKE, among the first acts of Governor Nicolls upon reaching America and, after overthrowing the Dutch governments in New Amsterdam and on the Delaware, was to offer liberal inducements to any who would locate within the province.

Among the terms offered were the following:

1. The purchases were to be made from the Indian Sachems and to be recorded before the Governor.

2. The purchasers were not to pay anything to the Governor for this right to purchase from the Indians.

3. The purchasers were to lay out towns and inhabit together.

4. No purchaser was to be permitted to contract for himself with any Sachem without the consent of his associates or special warrant from the Governor.

5. The purchasers were to be free from all manner of assessments or rates for five years after their town plot was laid out, and after that time they were to be liable only to the public rates and payments as were established for all inhabitants.

6. All lands purchased and possessed were to be in fee simple and as such could be disposed of as the purchaser desired.

7. Liberty of conscience was guaranteed.

8. The several townships were to have the right to make their particular plans and to try all small causes within themselves.

9. Each township was to select its own minister and pay him according to agreement.

10. Each township was to choose its own officers both civil and military.

11. Each man who took the "Oath of Allegiance" and was not a servant or day laborer was admitted to enjoy a town lot and to be esteemed "free Men of the Jurisdiction" and such rights could not be taken away without due process of law.

Elizabethtown Grant

Among those who sought the right to purchase and settle within the boundaries of New Jersey were six inhabitants of Jamaica, Long Island, who desired to locate on "the River called Cull" (subsequently known as Arthur Cull Sound). This petition was dated September 26, 1664.[1] On October 28th, 1664, these petitioners obtained a deed from the Indians for certain lands on the Raritan River and Arthur Cull, which purchase was confirmed by Governor Nicolls December 1st, 1664, and is described in the grant as follows:

"* * * * the said Parcel of Land Bounded on the South, by a River commonly called the Rariton River, on the East by the Sea which parts Staten-Island and the Main, to run Northward up after Cull-Bay, till you come to the first River which sets Westwards out of the said Bay, and to run West into the Country twice the length of the Breadth

[1] New Jersey Archives, vol. I (first series), p. 14.

> thereof from the North to the South of the aforementioned Bounds, together with all the Lands, Meadows, Pastures, Woods, Waters, Fields, Fences, Fishings, Fowlings, with all and singular the appurtences, with all Gains, Profits, and advantages, arising or that shall arise upon the said Lands and Premises."[1]

The territory embraced within this grant included the towns of Amboy, Rahway, Elizabethtown, Woodbridge and Piscataway, the whole of the present Union County, part of the towns of Newark and Clinton; a small part of Morris County and a considerable portion of Somerset County—containing about 500,000 acres.

Under the agreement between the grantees, the division of the lands was to be upon the respective sums of money which each should contribute. There were to be three classes of land owners, known respectively as "first lot men," "second lot men," "third lot men." There were eighty associates, of whom twenty-one had "third lot rights," twenty-six had "second lot rights," and thirty-three had "first lot rights." Each associate was first to receive what was known as a "home lot," after which second lot men were to receive double the amount of the first lot men, and third lot men treble that of first lot men. Only a portion of the entire grant was surveyed and divided, the balance being held in common until about 1699, when by a vote of town meeting it was decided to proceed with the division of the remaining portion of the unoccupied lands under the Nicolls grant. Surveyors were appointed "to Lay out, Divide, and Equally assise

[1] New Jersey Archives, vol. I (first series), p. 17.

all the Lands and meadows within the whole Bounds and purchase of Elizabeth Town, to every one Interested therein by Right of purchase under the honourable General Richard Nicholls, their Several and Respective parts and shares of the whole." Surveys were made and about 17,000 acres divided into 171 lots which were duly distributed among the associates. This division was derisively known as the "Clinker Lot Division" and those benefitting by it "Clinker Lot Right Men."

When Governor Phillip Carteret, who had been appointed to represent the Lords Proprietors, arrived at Elizabethtown in 1665, he found four families already located there, claiming title to the land by virtue of the grant from the Duke of York's Governor, Nicolls. He in a way acquiesced in the Nicolls grant for shortly after settling in Elizabeth he became a "third lot man" in his own right and later purchased the interest of John Bailey, one of the six original purchasers of the Elizabethtown tract. In 1666, Governor Carteret, Ogden and Watson, the two latter original grantees, conveyed to Daniel Pierce and his associates about one-half of the Elizabethtown tract, extending from the Raritan River to the Rahway River (called in the deed, Rackaway) and running back into the country an indefinite distance. It was on this tract that the settlements of Woodbridge and Piscataway took place. It must be noted that while the grant from the Duke of York to Lord Berkeley and Sir George Carteret is dated June 24, 1664, the grant to the six inhabitants of Jamaica, Long Island, was not made until December 1, 1664. Undoubtedly Governor Nicolls did not know, nor had he heard officially of the conveyance

to Berkeley and Carteret until long after the Elizabethtown grant had been made and, under his commission, he could only take his orders and instructions from the Duke himself. This was the first conflict of authority between the representative of the Lords Proprietors and the Duke's Governor.

The Newark Tract, which was purchased from the Indians by deeds[1] dated July 7, 1667, and March 13, 1677-8, was acquired with the consent of Governor Carteret, but fell within the bounds of the Elizabethtown purchase, as claimed by the associates. The bounds between Newark and Elizabethtown were, however, arranged by mutual agreement between the two towns. The inhabitants of Newark, like those of Elizabethtown, refused to recognize the control of the proprietors over the lands within their bounds, refusing to patent the land, or pay quit-rent. The result was that on December 7, 1672, the Lords Proprietors declared "That the Arrears of Quit-rents of *Elizabeth Town, Newark, Piscataquay* and the two Towns of *Navesink* and all others that have not paid since the Year 1670 be paid to our Receiver General in three Years from 1673, at the rate of One Halfpenny a Year for every Acre, besides their growing rents, until their Arrearages be satisfied and paid."[2] The penalty for failure to pay the back quit-rents was forfeiture of the lands.

This grant and the subsequent transfers and divisions of lands claimed thereunder caused a prolonged controversy and much disturbance up to the outbreak of the Revolution. Numerous suits of ejectment were brought

[1] New Jersey Archives, vol. VII (first series), p. 30.
[2] New Jersey Archives, vol. I (first series), p. 106.

in the Supreme Court and verdicts first for one side and then for the other given, with the final suits in the Court of Chancery brought by the proprietors against several holders of titles under the Clinker Lot survey and embodied in the famous Elizabethtown Bill in Chancery, which was published in 1747 and brought forth The Answer to the Elizabethtown Bill in Chancery published in 1752. At the time of the preparation and filing of the Bill in Chancery[1] Lewis Morris was governor of New Jersey. He was a large land owner in East New Jersey, deriving his title thereto from the Proprietors and, therefore, would naturally have sided with the Proprietary party. By virtue of his office he claimed the right to exercise the prerogatives of Chancellor, and, had death not intervened would have sat in judication on the case. Unfortunately for the advocates of the Bill, Governor Belcher, who succeeded Morris, promptly identified himself with the Anti-Proprietary party. The troubles which were beginning to brew in opposition to the English policy of oppression and taxation, culminating in the Revolution, however, prevented this case from ever coming to a conclusion. No judicial interpretation of the rights of the proprietors to the lands included in the Nicolls grant was ever handed down.

Monmouth Patent

Another grant from Governor Nicolls which has played an important part in title litigation in New Jersey was that relating to land at "Sandy Point" (Sandy

[1] Hatfield in History of Elizabeth states that the Bill was purported to have been filed April 13, 1745.

Hook) and on the Raritan Bay, which became known as the Monmouth Patent.

In 1665 a number of residents of Gravesend, Long Island, applied to and obtained permission from the Governor of New York to purchase from the Indians certain lands in the province of New Jersey, and having purchased the territory from the Sachems, later applied for a confirmation of the grant.

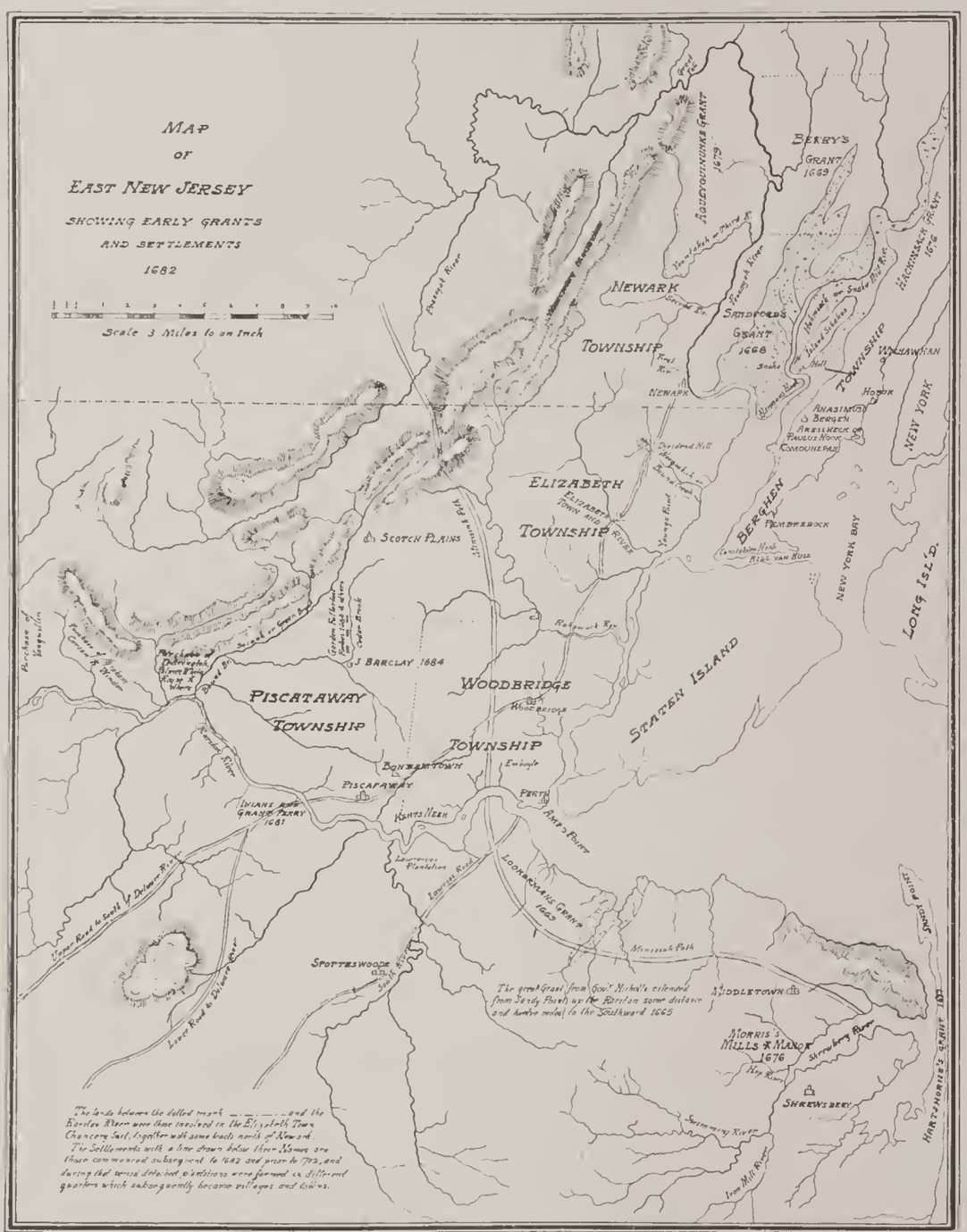
The patent for this grant from Governor Nicolls, dated April 8, 1665, defines the boundaries of the same as follows:

> "* * * * all that Tract and Part of the main Land, beginning at a certain Place commonly called or known by the Name of Sandy Point, and so running along the Bay West North West, till it comes to the Mouth of the Raritans River, from there going along the said River to the Westermost Part of the certain Marsh Land, which divides the River in two Parts, and from that Part to run in a direct South West Line into the woods Twelves Miles, and then to turn away South East and by South, until it falls into the main Ocean; together with all Lands, Soils, Rivers, Creeks, Harbours, etc."[1]

This conveyance included the entire territory afterwards embraced in Monmouth County, as well as parts of other adjacent counties, within which the towns of Shrewsbury, Middletown and Portland Point were located.

A condition attached to this patent was that the grantors should, within a space of three years, manure

[1] New Jersey Archives, vol. I (first series), p. 44.



Map of East New Jersey, showing early grants and settlements, 1682

and plant the said premises and settle there at least one hundred families, and for carrying out these provisions the patentees were to enjoy the lands free from rent, customs, duties, etc., for a period of seven years and after that period the rents or taxes were to be the same as in other portions of the colony. They were authorized to "erect and build their Towns and Villages in such Places, as they in their Discretions shall think most convenient, provided that they associate themselves, and that the Houses of their Towns and Villages, are not too far distant and scattering one from another." This patent also gave authority to provide for local self-government by allowing them "to make such peculiar prudential Laws and Constitutions" as they saw fit, including the erection of courts to try all causes and actions for debt and trespass, where the amount did not exceed 10£. In accordance with this authority, a legislative body, called a General Assembly, composed of the patentees and delegates from the three towns of Middletown, Shrewsbury and Portland Point, was held at Shrewsbury on December 14, 1667. It was purely a local body and claimed jurisdiction only over the territory covered by the above grant. It was, however, the first assembly claiming any legislative power which met in the province.

Other Grants or Charters

In addition to the above there were several grants or charters issued by the Proprietors, or their representatives, which have played an important part, not only in the determination of upland titles, but also in the titles to the soil under water.

In 1665 Governor Carteret recognized the government of Bergen, which had been settled by the Dutch some years previous, under grants from the Dutch West India Company, and in 1668 granted a charter to the freeholders of the township. The Dutch grants were confirmed in the agreement between Governor Nicolls and the Director General of New Netherlands, upon the surrender of New Amsterdam, upon condition that the inhabitants would take the Oath of Allegiance. By the charter, the bounds of the township were defined as beginning "at a place called Mordams Meadow, lying on the west side of the Hudson; from thence they extended in a northwest 'lyne' by a 'three rail fence' to a place called Espartin and from thence to a little creek running into the Hackensack River. The Hackensack River was then the limit 'till it comes to the point, or neck of land, that is over against Staten Island, or Schooter's Island, in Arthur Cull Bay." The bound was then the Kill van Kull to Constable's Hook, and thence the 'lyne' was the Hudson to the starting-point." This tract included about 11,520 acres and the consideration was, in lieu of the usual quit-rent of one-half penny per acre, fifteen pounds sterling annually.

Another grant was that to Ide Cornellisen Van Vorst dated March 31, 1668,[1] for a tract of 100 acres "between Haasimus and Jan de Lackers Point." This tract is described in the Act of 1804,[2] incorporating The Associates of the Jersey Company, who had acquired the same, as follows:

[1] New Jersey Archives, vol. XXI (first series), p. 3.
[2] Laws of New Jersey, 1804, p. 367.

"bounded on the east by Hudson's River; on the north by the said river, or the bay commonly called Harsimus Bay; on the south by the said river, or the bay commonly called Communipaw Bay; and on the west by a line drawn from a stake, standing on the southwest side of the said tract (from which stake the flag staff on Ellis's Island bears south, one degree twenty minutes east; and from which the chimney of the house of Stephen Vreeland, on Kaywan, bears south, fifty-six degrees ten minutes west; and from which the steeple of the Bergen church bears north, fifty degrees twenty-five minutes west), north twenty-six degrees, thirty minutes east to Harsimus Bay aforesaid; together with the right of ferry from the said tract, or parcel of land, across Hudson's river and elsewhere; and the right and title of the said Cornelius Van Vorst, under the water of the Hudson River and the bays aforesaid, opposite said premises as far as the right of the said Cornelius Van Vorst extends."

This grant has played a very large part in the question of the ownership of the soil under water along the navigable waterways of the State of New Jersey.[1]

Among the other early grants and leases it is only necessary to mention the following:[2]

In 1667 to Lawrence Andriessen for land in the tract called Minkacque, under the jurisdiction of Bergen, along the Hudson River, amounting to 170 acres, subject to quit-rent of one penny for each acre to begin March 25, 1670.[3] In 1682 he received a deed for 1,076 acres at

[1] See Associates of the Jersey Company vs. Mayor and Common Council of Jersey City, 4 Halsted, 715.

[2] See New Jersey Archives, vol. XXI (first series), for abstracts of these patents and deeds.

[3] East Jersey Records, Liber No. 1, p. 10.

"Hackingsack," the patent for which was in the name of Lady Elizabeth Carteret.[1]

In 1668 to Nicholas Verlett of a tract of two hundred and sixty-six acres at "Hoboocken," "between Hudson River, the creek of Hahassemes, the Bay, the Wiehaeckese Creek and the highlands or woods on the northwest, maintaining there a free passage."[2]

In 1668 to Captain William Sanford of a tract comprising 15,308 acres of upland and meadow, lying south of a line drawn from the Hackensack to the Passaic Rivers, seven miles north of their intersections. This tract became known as the "New Barbadoes Tract."[3]

In 1669 to Captain John Berry "for land towards the head of Pesawack Neck, now called New Barbados, from Sandfords Spring six miles up into the country between the two rivers."[4]

In 1669 to Govert Loockermans and his associates of several tracts and parcels of lands "on the west side of Raritan's River over against Staten Island."[5]

In 1676 to Richard Hartshorne for several parcels of "lands in and about Navesinks, vizt: 1, 200 acres in Wakecake Neck; 2, 220 acres of Areewinenocke Neck along Conescunke Creek; 3, 200 acres on Conescunke Neck or Navesinck Bay; 4, 70 acres of meadow along said bay, bounded east by Richard Gibbons, west by a little bay joining to Changerore; 5, 60 acres of meadow in several parcels around the said neck."[6] The said Richard

[1] East Jersey Records, Liber No. 4, p. 6.
[2] Ibid, Liber No. 1, p. 30.
[3] Ibid, Liber No. 1, p. 33.
[4] Ibid, Liber No. 1, p. 46.
[5] Ibid, Liber No. 1, p. 48.
[6] Ibid, Liber No. 1, p. 150.

Hartshorne also obtained patents for several tracts in and along the Manasquan River in Monmouth County.

In 1676 to Colonel Lewis Morris and his associates in the Iron Works at "Navesinck," now Tinton Falls, of 3,840 acres of lands on the Shrewsbury "between the branches of Swimming River and Falls River," also 60 acres of fresh meadow south of the larger tract, the whole to be called "Tinton Manor."[1]

In 1682 to Governor Phillip Carteret, Capt. Mathias Nichols, Jacop Courtillou and associates received a patent for 5,320 acres, a tract called Aqueyquinunke, or the Saddle River Tract between the Passaic and Saddle rivers.[2]

In 1684-5 to Hans Diderick and his associates from Bergen of a tract north of the northernmost line of the town of Newark to the Great Falls on the Passaic River. This tract was purchased from the Indians in 1679, as "Haquequenuck" afterwards spelled "Acquickemunk." (The consideration in this grant is given as fifty pounds with an annual rental of fourteen pounds sterling. It includes the greater part of the present city of Paterson, part of Passaic and all of Acquackanonk Township.)[3]

In 1709 the Ramapo Tract, between the Ramapo and Saddle Rivers, in Bergen County, was, under warrant from Peter Sonmans, "Sole Agent, Superintendent and General Attorney and Receiver General of the rest of the Proprietors, effectually representing the whole twenty-four proprietors,"[4] surveyed to Peter Fauconnier and

[1] East Jersey Records, Liber No. 1, p. 155.
[2] Ibid, Liber No. 4, p. 8.
[3] Ibid, Liber A, p. 164.
[4] Roome, Early Days and Early Survey in East Jersey, p. 31, et seq.

associates. The validity of this survey and deed was disputed by the Board of Proprietors on the ground that Sonmans did not have sufficient authority to make the conveyance. The dissension between the tenants and proprietors continued until about 1790, when through lease, purchase or compromise the authority and rights of the purchasers were acknowledged.

The New Britain Tract in Essex County to the northeast of Elizabethtown also conveyed by Sonmans was the cause of lengthy legal proceedings by the legitimate proprietors to recover possession of their property. The proprietors of West Jersey, as well as those of East Jersey, were interested in the validity of this grant.

While the majority of the grants above noted were in strict accordance with the regulations as laid down by the Lords Proprietors, there were several the validity of which was contested and in some cases the conditions in the grants were not subsequently observed. These contentions finally reached the ears of the King and the Duke of York. In 1672 the Duke wrote to Governor Lovelace, the successor to Governor Nicolls, as follows:

> "I am informed that some contentious Persons there, do lay Claim to certain Tracts of these Lands (those covered by the Berkeley-Carteret Patents), under color of pretended Grants thereof from the said Colonel *Nicholls,* namely one of the first of *December* to *John Baker* and his Associates (The Elizabethtown Grant); and another of the 8th of *April* to *William Golding* and his Associates; both which Grants (being posterior to my said Grant of the 24th of *June)* as I am informed are void in Law, and therefore I would have you take Notice yourself,

> and when Occasion offers, make known to the said Persons, and to all others, if any be pretending from them, that my Intention is not at all to countenance their said Pretentions nor any other of that kind, tending to derogate in the least from any Grant above-mentioned to the said John Lord Berkeley and Sir George Carterett, their Heirs and Assigns."[1]

Furthermore, in 1672, in a letter from King Charles II. to Captain John Berry, Deputy Governor of New Jersey, the King commanded that all inhabitants of the province should yield obedience to the laws and government established by the Lords Proprietors Berkeley and Carteret and recognize their exclusive rights to sell and dispose of the lands granted to the Lords Proprietors.

Notwithstanding these assurances, there were many matters which prevented the carrying out of the plans of the Lords Proprietors. Lord Berkeley, who had no particular interest in America, other than a financial one, was anxious to get out of the whole affair without loss. When, therefore, the opportunity came, he was only too ready to grasp it.

By deed dated March 18, 1673-74, Lord Berkeley conveyed, for 1000£, his moiety, or half portion, of the province of New Jersey to John Fenwicke, in trust for Edward Byllinge and his assigns, absolutely and in fee simple. Fenwicke and Byllinge soon became involved in a serious difference as to the land. In the meantime, Byllinge, who was a brewer in England, having through misfortunes in trade become a bankrupt, his creditors suspected he had some interest in the territory

[1] New Jersey Archives, vol. I (first series), p. 98.

conveyed by Berkeley to Fenwicke. An inquiry was instituted by William Penn as arbitrator and it was disclosed that Byllinge was in fact the owner of nine-tenths of the conveyance, and Fenwicke of one-tenth. That the former's creditors might derive advantage therefrom a deed was executed February 4, 1674-5,[1] conveying the nine-tenths interest to three trustees, William Penn, Gawin Lawrie and Nicholas Lucas as "releasees to uses" for the benefit of his creditors.

Fenwick resisted this award, but finally, on March 23, 1682, relinquished his claim to any further right and estate in the moiety of New Jersey, including expressly the tenth reserved to him by the "release to uses,"[2] except that tract known as Fenwicke's Colony containing 150,000 acres. Fenwicke divided his tract of land into three allotments—the Salem, the Alloways and the Cohanzic—the exact bounds of which are not definitely known. The boundary lines of the entire tract, however, were, as subsequent investigations and comparisons of deeds for lands which Fenwicke sold, substantially as follows:

Oldman's Creek on the north, Cohansey Creek on the south, the present Cumberland County line on the east and the Delaware River on the west.

Fenwicke, in carrying out plans for the development of his share of the Berkeley purchase, had, before leaving London, borrowed considerable sums of money from John Eldridge and Edmund Warner, and as security for the loan had by indenture dated July 17-19, 1675, given

[1] Smith, History of New Jersey, p. 79.
[2] New Jersey Archives, vol. I (first series), p. 370.

them a lease for 1000 years of all unsold lands in his tenth, with the right to sell so much of the land demised as would reimburse them for the money advanced. Under this power, the lessees, Eldridge and Warner, sold to Penn, Lawrie and Lucas all of the lessor's rights and title, excepting the claims of those who, in 1675, had settled in the Fenwicke tenth under deeds from him prior to the lease.

In 1672 war broke out between England and Holland, and during the hostilities a Dutch naval force seized New York (July 13, 1673), and re-established their authority over the territory which they had lost when the English fleet, under Sir Robert Carre, on September 3, 1664, took New Amsterdam. The fall of New York carried with it all the English possessions in New York and New Jersey. This territory remained under the jurisdiction of the Dutch until the Treaty of Westminster on February 9, 1674, in which the sovereign Dutch States-General formally ceded to the King of England all of the New Netherlands. In this way the territory again came into possession of the King of England as sole proprietor.

There being some doubt as to whether the patents previously made to the Duke of York and his release to Berkeley and Carteret were in force, since all the peace negotiations were directly with the English sovereign, a new patent was issued by Charles II. to James Duke of York, on June 29th, 1674, and on July 28th-29th, 1674, the latter by "LEASE AND RELEASE" granted a portion of the same to Sir George Carteret.[1] The ter-

[1] New Jersey Archives, vol. I (first series), pp. 161-167.

ritory which he transferred was, however, only that portion which afterwards became known as East Jersey, as will be seen by the description contained in the indenture.

> "All that Tract of Land adjacent to new England and lying and being to the westward of long Island and Manhatam Island and bounded on the East parte by the said Maine Sea and parte by Hudsons River and extends Southward as far as a certaine Creek called Barnegatt being aboute the middle betweene Sandy point and Cape May and bounded on the West in a Streight line from the said Creek called Barnegatt to a certaine Creek in Delaware River next adjoyneing to and below a certaine Creek in Delaware River called Rankokus Kill and from thence up the said Delaware River to the Northernmost branch thereof which is fforty one Degrees and fforty minutes of Latitude and on the North crosseth over thence in a streight line to Hudsons River in fforty One Degrees of Latitude which said Tract of land is hereafter to bee called by the name or names of new Ceserea or new Jersey, and alsoe all Rivers Mines mineralls woods fishings hawkins hunting and fowling, and all Royalties proffitts co'modities and hereditaments whatsoever to the said Lands and premisses belonging or apperteyning with their and every of their Appurten'nces, and the Reverc'on and Reverc'ons Remainder and Remainders thereof."

The consideration in this grant was the same as called for in the deed of 1664.

It will be noted that there is no mention of Lord John Berkeley in this patent, for the obvious reasons that he had, as above noted, disposed of his moiety, or

half portion, of the original grant. The holders of Berkeley's portion of the province went ahead as if their title had not been affected by the Dutch conquest and the Treaty of Westminster. It was not until several years later that the Duke of York confirmed the title of the new proprietors to West Jersey.

On June 13, 1674, fourteen days before the date of the patent to the Duke of York, Charles II. caused a letter to be written in which he confirmed and recognized the grant subsequently made to Sir George Carteret (the remaining original Proprietor) and commanding all persons:

> "to yield obedience to the Laws and Government which are or shall be there established by the said Sir George Cartarett, who hath the sole Power under us, to settle and dispose of the said Country, upon such Terms and Conditions as he shall think fit."[1]

During the joint ownership of Berkeley and Carteret there had been no attempt to make a territorial division of the grant from the Duke of York, and it is not certain that any had been contemplated. All of the property was held as tenants in common. The grant of June 13th, 1674, to Carteret, however, indicated that there must have been some general understanding as to a division line between the original proprietors, or their successors. The assignment of the Byllinge share of the Berkeley claim to his three trustees who, in the exercise of their trust, had succeeded in getting many of the Byllinge creditors to accept lands in satisfaction

[1] New Jersey Archives, vol. I (first series), p. 154.

of their claims, brought in new proprietors. In addition, the lease of the Fenwicke tenth had still further complicated the situation and called for a partition of the province. In order to accomplish this more readily, Eldridge and Warner, as lessees of Fenwicke, conveyed the "Fenwicke Tenth" to the Byllinge trustees. The entire province was thus in control of Sir George Carteret, William Penn, Gawin Lawrie, Nicholas Lucas and Edward Byllinge (as regards any equity he might have). On July 1, 1676, the now famous Quintipartite Agreement [1] was signed by these five proprietors and the province of Nova Caesarea, or New Jersey, was divided into East Jersey, under the proprietorship of Carteret, and West Jersey, held by the trustees of Byllinge. After this division the Fenwicke share was reconveyed to Eldridge and Warner in fee. This reconveyance completely cut off any reversionary claim which Fenwicke might have had.

By grant dated August 6, 1680, the Duke of York confirmed title to the lands which he had by grant of 1664 conveyed to Lord John Berkeley and which had subsequently been first sold to John Fenwicke and Edward Byllinge and by them placed in trust or transferred to William Penn, Gawin Lawrie, Nicholas Lucas, John Eldridge and Edmund Warner.

This grant also contained the following:

> "Together with all Islands Bayes Rivers Waters Forts Mines Quarries Royalties ffranchises and appurten'nces whatsoever to the same belonging or in

[1] New Jersey Archives, vol. I (first series), pp. 205-219.

> any wayes appertaining AND ALL the Estate Right Title Interest Reverc'on Remainder Claime and Demand whatsoever As WELL in Law as in Equity of him the said James Duke of Yorke of in unto or out of the same or any part or parcell of the same As ALSO the free Vse of all Bayes Rivers and Waters Leading unto or lying between the said p'misses or any of them In the said parts of America for Navigation ffree Trade ffishing or otherwise."

In this deed, while title to the lands in West Jersey was confirmed in the fullest terms to Penn, and his associates, the authority of government was expressly conveyed to Byllinge, his heirs and assigns. This grant of power was strenuously resisted by the proprietors resident in New Jersey and led to constant trouble between the deputy governor of Byllinge and the General Assembly.

On March 3, 1676-77, one hundred and fifty-one Proprietors, Freeholders and Inhabitants of the Province of West New Jersey agreed upon and adopted "The Concessions and Agreements of West Jersey." This instrument gave a greater amount of local self-government than had any previous document, and aside from certain weaknesses of administration has been commended by historians generally.

The questions of lands occupy a prominent place in the West Jersey Concessions. Persons desiring to take up land in West Jersey must have "the consent of one or more of any of the Proprietors of the said Province, attested by a Certificate, under his or their Hands and Seals." The allotments were somewhat smaller than

those granted in the Concessions of the Lords Proprietors and the terms were less liberal, if the settlers delayed. The quit-rents were paid to the individual proprietors and not, as in East Jersey, to a proprietary office. The payment of this rent, being a private business transaction, little is known as to whether any demands were made therefor.

Byllinge's trustees disposed of two considerable shares of his original grant to his principal creditors. One whole tenth of West Jersey went to a company of creditors from Yorkshire, headed by Thomas Hutchinson, and another tenth portion to a group of Quakers resident in London. Commissioners composed of James Wasse, Richard Hartshorne and Richard Guy were sent to the Delaware, to make surveys of the respective share, or proprieties. The next large sale of Byllinge land was made in satisfaction of debts to five Irish Friends. The Yorkshire tenth selected lands reaching from the Falls of the Delaware (vicinity of Trenton), to "Rankokus" Creek; the London Company chose a portion of territory lower down the Delaware, in the vicinity of Arwames (Gloucester Point), but finally, by agreement, these two groups decided to act together in settling a town, and a place was selected called Beverly, afterwards changed to Bridlington and finally Burlington. In consequence of this agreement the London settlers took lands nearer the places of principal settlement. The Irish tenth arrived on the Delaware River in 1681 and took the land reaching from Pensaukin to Timber Creeks.[1]

[1] Mickle's Reminiscences of Old Gloucester, p. 34.

There appeared, however, a factor to disturb the proper sale of the lands of the several proprieties in the person of Byllinge. Notwithstanding the fact that all of his property had been placed in the hands of trustees for the benefit of his creditors, and before these trustees had resigned their trust, he undertook to grant lands in his own name. His action in this respect was clearly illegal, and the council of proprietors promptly voted such deeds insufficient for the issue of warrants of survey.[1]

As having a bearing on the rights of government, the coming of Doctor Daniel Cox into the affairs of West New Jersey played an important part in the subsequent political policy of the colony. Upon the death of Edward Byllinge, his estate became vested in his two daughters, as heirs-at-law, Gracia married to Benjamin Bartlett and Loveday, who died single. Bartlett had, through a deed from Byllinge, dated January 7, 1680, become seized of five whole shares. These five shares were transferred to Dr. Daniel Cox, by deed dated February 18, 1686, who by several subsequent deeds also obtained all of the rights and titles of the several direct Byllinge heirs. By letter dated September 5, 1687, to the Council of Proprietors of West New Jersey, that being the only organized representative body within the province, Dr. Cox, with the consent of the Proprietors in England, proclaimed himself governor of West New Jersey. He based his claim to this office upon his purchase of the Byllinge proprieties in West New Jersey, together with all the titles and prerogatives attached

[1] Minutes of the Council of Proprietors of West Jersey, 1688.

thereto. Dr. Cox played a prominent part in the boundary line question between East and West Jersey. In 1691 Cox transferred his interests in both East and West New Jersey to a company of gentlemen in London, who adopted the title and name of The West New Jersey Society. This Society disposed of numerous tracts of land and many deeds come down through this source.[1]

During all this later period New York was under the control of the Duke of York, who, through his representative, Governor Andros, claimed certain jurisdiction over New Jersey. In many and numerous ways he continually harassed the settlers therein and the government set up under the authority of the Proprietors thereof. Protests were made to the Duke against some of these conditions, especially against the payment of customs and other duties. So vigorous were these protests that the Duke referred the entire question of his rights in the premise to Sir William Jones, formerly Attorney-General of England, but now one of his greatest opponents. It is interesting to note the following opinion thereon:

28 July 1680.

"I doe hereby humbly certify that having heard w't hath beene insisted upon for his Roy'll Highnesse to make good y'e legallity of y'e demand of Five p'r'cent from y'e inhabitants of New Jersey: I am not satisfyed (by anything that I have yet heard) that y'e Duke can legally demand that or any other duty from y'e inhabitants of those lands. And y't w'ch makes y'e case the stronger against

[1] See New Jersey Archives, vol. II (first series), p. 4.

his R'll H'ss is, that these inhabitants clayme und'r a graunt from his Roy'll Highnesse to y'e Lord Berkeley and Sir George Cartarett in w'ch graunt there is noe reservas'on of any proffitt or soe much as of Jurisdic'on."

Sir George Carteret, one of the original Lords Proprietors, died in 1679, and by his will his province was devised to trustees to be sold for the benefit of his creditors. His widow, Lady Elizabeth Carteret, was left executrix of his estate and guardian to his grandson and heir, Sir George Carteret, and devised to six trustees, or their heirs, all of his property in East Jersey for the benefit of his creditors, with full power to sell, or dispose of, the same in such a manner as would best satisfy the claims against his estate. The death of the Lord Proprietor was followed by no immediate change in the state or management of affairs in the province. By deed dated September 10th, 1680,[1] which was, however, not signed until the following October 16th, the grandson and heir obtained a release from the Duke of York of all the lands of which his grandfather became seized by the Quintipartit Deed in 1676.

In pursuance of their instructions to sell or dispose of the lands as above noted, his trustees endeavored to find a purchaser by private application, but no private purchaser presenting, it was decided to expose the entire proprietary interest at a public sale to the highest bidder. William Penn and eleven associates became the purchasers of East Jersey for the sum of £3400. This purchase was acknowledged and confirmed by lease and

[1] New Jersey Archives, vol. I (first series), p. 337.

release from Elizabeth, widow of Sir George Carteret, and his trustees, dated February 1st and 2d, 1681-2.[1] Not long afterwards each of these purchasers sold one-half of his respective rights to a new associate, thus making the total number of proprietors twenty-four. In order to obtain absolute title and release of all or any claims or demands, a deed was made by the Duke of York to the twenty-four proprietors under date of March 14, 1682.[2] As further strengthening their hold upon the province, the King on November 23, 1863,[3] issued a letter in which this grant of the Duke of York to the Proprietors was fully confirmed and his Majesty also decreed that all persons concerned in the province should yield all due obedience to the laws and government of the grantees, their heirs and assigns, as absolute proprietors and governors thereof. In 1683 the twenty-four proprietors issued "The Fundamental Constitution for the Province of East New Jersey in America."

This was the last grant from the Duke of York of lands in New Jersey. From now on these matters were in the hands of the proprietors. Each province had many and different proprietors, who advanced separate schemes and interests. The several factions opposed each other in the choice of governors and refused to abide by the selections or listen to moderate counsel. Peace and harmony were lacking and disorder ran riot. Added to the internal disorders was the death of Charles II. in 1684 and the accession to the throne of James, Duke of York. As James II., he had very little regard for the contracts

[1] New Jersey Archives, vol. I (first series), p. 366.
[2] Ibid, p. 383.
[3] Ibid, p. 440.

and charters granted by the same James, Duke of York. He immediately began planning to annul all of his previous grants and conveyances, especially those containing governmental concessions. *Quo warranto* proceedings were started in 1687 by the Attorney General on the ground that it was prejudicial "that such independent governments" (New Jersey, Maryland and the Carolinas) "be kept up and maintained without a nearer and more immediate dependence on your Majesty."

Andros, who had previously been commissioned governor of New York was in 1686 appointed Governor Captain General and Vice-Admiral of New England and two years later New York and New Jersey were also placed under his jurisdiction. Finding resistance useless, the Proprietors determined to surrender their government, striving only to have their rights to land respected. This new arrangement, however, did not last, since the overthrow of the Stuart dynasty placed William and Mary on the throne and resulted in the recall of Andros. Matters drifted along with the Proprietors exercising such local government as they were able, until 1694 when the question of the right of the Governor of New York to control the customs houses of the province of New Jersey again became acute. With no strong local government and with a bitter struggle between the proprietory and royal authorities, it became evident about 1699 that the only feasible plan was to abandon all claim to governmental power. Overtures were made to the Crown to surrender the right of government, if their title to property was secured and some minor concessions granted.

In 1702 the surrender of the rights of government was made in a lengthy petition which was signed by twenty-six proprietors of East Jersey, and thirty-two proprietors of West Jersey. This petition was originally submitted to King William in Council January 29th, 1701-2, but the King having died before its execution delayed the final acceptance by the Crown until April 17, 1702. The form of surrender was as follows:

> "THE PRESENT PROPRIETORS of the said Provinces of East Jersey and West Jersey for the Consideraç'ons and to the intent aforesaid Have Surrendered and yielded up And by these presents for Us & our heirs do Surrender & yield up unto Our Soveraigne Lady Anne by the Grace of God Queene of England Scotland France and Ireland Defend'r of the ffaith &'c. her heirs & Successors All those the said Powers & Authorityes to correct punish pardon govern & Rule all or any of her Majestie's Subjects or others who now inhabit or hereafter shall adventure into or inhabit within the said Provinces of East Jersey & West Jersey or either of them & also to nominate make constitute ordain & Confirm any Laws Orders Ordinances and directions & Instruments for those purposes or any of them And to Constitute Nominate Appoint revoke discharge change or alter any Governour or Govenours Officers or Ministers which are or shall be appointed made or used within the said Provinces or either of them and to make ordain & establish any Orders Laws directions Instruments Forms or Ceremoynes of Government and Magistracy for or concerning the Government of the Provinces aforesaid or either of them or on the Sea in going & coming to or from thence or to put in Execuc'on or Abrogate Revoke

or change such as are already made for or concerning such Government or any of them And also All those the said Powers and Authorityes to Use and exercise Martiall Law in the Places aforesaid or either of them And to Admitt any person or persons to trade or traffic there and of Encountring Repelling and resisting by force of Arms any P'son or P'sons attempting to inhabit there without the Licence of Us the said Proprietors our heires or Assignes And All other the Powers Authoritye Priviledges of or concerning the Governm't of the Provinces aforesaid or either of them or the Inhabitants thereof which were granted or menc'oned to be granted by the said recited Letters Patent and every of them."[1]

In giving up their right of government, owing to the difficulties of maintaining order and enforcing the decisions of the courts, the Proprietors were intent upon preserving their pecuniary interests. The chaotic condition into which the province was fast drifting would tend to confirm this object, especially as the instructions to the first royal governor carefully guarded the proprietary rights to the soil and to the enforcement of the quit-rents.

This ended the proprietary government in New Jersey and, while the proprietors retained their respective land interests, these could not by any arguments include the prerogatives, either actual or assumed, which had come to them in their capacities as Lords Proprietors.

[1] New Jersey Archives, vol. II (first series), pp. 458-459.

UNDER ROYAL GOVERNMENT

Upon the surrender of the government of New Jersey by the Proprietors, Queen Anne appointed Lord Cornbury governor of both New York and New Jersey. Under the new plan East and West New Jersey were fully united and incorporated together as one province. The commission and instructions which Cornbury received[1] formed the constitution and government of the province, until its declaration of independence. Among the numerous instructions given to the governor was the provision that no person should be capable of BEING ELECTED a representative to the General Assembly who did not have one thousand acres of land in his own right within the division for which he was to be chosen; and that no freeholder should have the RIGHT TO VOTE for such representation who did not own in his own name one hundred acres.[2]

By this provision practically only the proprietors could serve in the assembly and only a small percentage of the population could vote for a representative therein.

The instructions contained special provisions for the protection of the title to lands, and among these were the following:

> 36. "* * * * you shall propose to the general assembly of our said province, the passing of such act or acts, whereby the rights and property of the said general proprietors, to the soil of our said province, may be confirmed to them, according to their

[1] New Jersey Archives, vol. II (first series), pp. 489, 506.
[2] New Jersey Archives, vol. II (first series), pp. 510-511.

respective rights and titles; together with such quit-rents as have been reserved, or are or shall become due to the said general proprietors, from the inhabitants of our said province; and all such privileges as are express'd in the conveyances made by the said duke of Yorke, excepting only the right of government, which remains in us: And you are further to take care, that by the said act or acts so to be passed, the particular titles and estates of all inhabitants of that province and other purchasers claiming under the said general proprietors, be confirmed and settled as of right does appertain, under such obligations as shall tend to the best and speediest improvement or cultivation of the same."[1]

37. "You shall not permit any other person or persons besides the said general proprietors, or their agents, to purchase any land whatsoever from the Indians within the limits of their grants."[1]

38. "You are to permit the surveyors and other persons appointed by the forementioned general proprietors of the soil of that province, for surveying and recording the surveys of land granted by and held of them, to execute accordingly their respective trusts: And you are likewise to permit, and if need be, aid and assist such other agent or agents, as shall be appointed by the said proprietors for that end, to collect and receive the quit-rents which are or shall be due unto them, from the particular possessors of any parcels or tracts of land from time to time."[2]

39. "You shall transmit unto us, and to our commissioners of trade and plantations, by the first opportunity, a map with the exact description of our whole territory under your government, and of the several plantations that are upon it."[2]

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[1] New Jersey Archives, vol. II (first series), p. 517.
[2] New Jersey Archives, vol. II (first series), pp. 517-518.

Of the above instructions the first was carried out by the laws of December 1, 1703, and April 1, 1709.[1]

However, soon after Cornbury arrived in New Jersey, the factional differences between the proprietors and anti-proprietary parties sprang up. This was due largely to the assembly, which was under control of the proprietary party, refusing to give the governor a sufficiently large amount for the support of himself and his subordinates. Therefore, when the first Assembly prepared the famous "Long Bill"[2] ("An Act for the settling and confirming the Estates of all Proprietors and Purchasers of Land within this Province of New Jersey"), which would have, by legislation, forever settled the claims based upon the Nicolls grant and the Elizabethtown purchase in favor of the proprietors, Cornbury prorogued it before final action could be taken.

The next Assembly promptly reduced the qualifications necessary to vote for representatives to 100 acres of land. This was in direct variance with Cornbury's instructions, but it was a full year before the objections of the Crown were received in New Jersey. This and other acts, however, cemented and strengthened the anti-proprietary party, since by these measures the small land owner had a voice in the legislative councils of the Province.

At the same time certain minority proprietors residing in England, and known as the "English Proprietors," succeeded in having their representatives appointed and recognized by Cornbury to act as their agent in New Jer-

[1] Paterson's Laws of New Jersey, pp. 1 and 2.

[2] New Jersey Archives III (first series), pp. 17-19; pp. 28-35 and pp. 54-60.

sey, with authority to sell proprietary lands, appoint a surveyor general and settle accounts with all quit-renters. Under this arrangement numerous grants of lands were made, such as the "Ramapo Grant" and the "New Britain Grant," already noted. The result of this arrangement was a constant and continued source of trouble between the proprietors and those who had taken up lands in the province, and played a very important part in the political situation.

When, in 1715, the Supreme Court decided in the case of Vaughn v. Woodruff against the Elizabethtown claimants, many of them proceeded to buy up the proprietary rights to the several tracts still held by the proprietors in common and to have their lands appropriated to them under the proprietary agreement for apportioning dividends. This action was not because they believed the decision to be a just one, nor with the idea of abandoning their hope of having the case reopened at some future time, but to prevent being dispossessed of the property claimed under the Nicolls'[1] grant.

Boundary Line Between East and West New Jersey

About this time the boundary line between East and West Jersey again became an active controversy. There was much land in each division of the province held in common by the respective proprietors, and the location of the dividing line between the two divisions would settle the question as to titles of these unpatented lands. The purchaser had no absolute certainty as the rights of the

[1] Elizabethtown Bill in Chancery and Answer to Elizabethtown Bill in Chancery.

proprietors, from whom he might buy land, to give a clear title thereto.

Under the original grant to Berkeley and Carteret the western boundary of the province extended from

> "Cape May at the mouth of Delaware Bay and to the Northward as farre as y'e Northermost Branch of the said Bay or River of Delaware which is in fourtie one degrees and fourtie Minutes of Latitude."[1]

In the Quintipartite Agreement, after reciting that Berkeley was entitled to the "moyety or half part" of the province, provided that the dividing line shall extend

> "Southward by a straight and direct Line drawne from the said North Partition Poynt Southward through the said Tract of Land unto the most Southwardly poynt of the East syde of Little Egg Harbour."[2]

On June 30, 1686,[3] the Council ordered the line should be laid out, but the question immediately arose as to what should be considered the "North Partition Poynt" which, according to the original deed, was to be in latitude 41° 40′. A careful study of the topography of the province revealed the fact that there was no point on the Delaware River proper which was near this latitude. Seeing the possibilities of differences, the deputy governors of the two provinces together with several proprietors, in September, 1687, entered into a formal agreement to submit the question of the boundary line to

[1] New Jersey Archives, vol. I (first series), p. 12.
[2] New Jersey Archives, vol. I (first series), p. 213.
[3] New Jersey Archives, vol. I (first series), pp. 517-519.

arbitration, the award to be made upon a basis of, as nearly as possible, an equal division of New Jersey, and the Deputy Governor and Proprietors of West Jersey executed a bond for 5,000 Pounds, of lawful money of the Provinces, to stand by the award of the arbitrators, John Reid and William Emley.[1]

In 1687, George Keith, the surveyor-general of East Jersey, ran the line from the north side of the mouth, or inlet, of Little Egg Harbor to the south branch of the Raritan River near Three Bridges. The line so laid out, however, gave so much dissatisfaction to the West Jersey proprietors that it was not extended any further. Notwithstanding the objections raised to this line Governor Barclay for East Jersey and Governor Cox, who, as already noted, claimed full governmental authority over West Jersey, made a new agreement the next year (1688) for the division of the province. This agreement adopted the Keith line as far as surveyed and then ran in a broken line to the bounds of the province, or until it reached 41°. This time the opposition came from the East Jersey proprietors, since it gave West Jersey more than its share of land.

The controversy dragged along without any definite results until on March 27, 1719, the assembly passed an "Act for running and ascertaining the line of partition, or division, between the eastern and western division of the province of New Jersey, and for preventing disputes for the future concerning the same; * * * *" [2]Besides providing for the line as designated in the "Quintipartite Agreement," provision was made to reimburse

[1] New Jersey Archives, vol. I (first series), p. 522.
[2] Paterson's Laws of New Jersey, p. 7.

either set of proprietors by an exchange or transfer of unimproved and unoccupied lands; and the recording of all deeds with the surveyor-general of the respective divisions, within two years in the case of residents and three years in non-resident, under penalty of said grants being null and void.

The Commissioners to run the line were selected, three by the Governor of New York, three by the Governor of New Jersey, to represent the East Jersey proprietors, and two to represent the West Jersey proprietors, together with James Alexander, as Surveyor-General of both Jerseys. The purpose of this mixed commission was two-fold—first, to establish the north partition point on the Delaware River in which both States were concerned, since the northern boundary line between New Jersey and New York had not been fixed; and second, to settle the dividing line between East and West Jersey. John Chapman, who was selected to run the line, made a report upon it in 1720, his purpose evidently being to retrace the Keith line, as run in 1687. Nothing was accomplished by this commission in the way of settling the question. According to a pamphlet published by the Proprietors of West Jersey, in 1785, entitled "A concise view of the controversy between the proprietors of East and West Jersey," "The Commissioners met, quarrelled, executed the Tripartite deed, broke off, disputed about the goodness of their mathmatical instruments, separated without running the line."[1]

[1] Report of the Committee of the Council of Proprietors of West New Jersey in relation to the Province Line between East and West New Jersey, 1887, p. 15.

In 1743, upon request of the East Jersey Proprietors, Governor Lewis Morris commissioned John Lawrence "to run, mark, fix and ascertain the said lines of partition pursuant to said act of Assembly." This line it was claimed by the West Jersey Proprietors was *ex parte* and entirely in the interests of the eastern division. The matter dragged along until 1767, when the King appointed a Royal Commission, which finally settled the *northern station point* as in 41° 21′ 37″ north latitude, where the Mackhackmack, or Navesink, river falls into the Delaware.[1] Thus the dispute of two centuries as far as the one end of the line was practically settled, although the line has not, to the present time, been laid out in its entirety.

[1] See reference pages 53-58. (N. Y. and N. J. Northern Boundary Line.)

STATE BOUNDARY LINES

Northern Boundary Line Between New Jersey and New York

Another matter closely related with the division, or province, line was the northern boundary line between New York and New Jersey. With the settlement of the "northern station point" for the line between East and West New Jersey, one point in the State line would also be determined. It then only remained to fix the location of the 41st degree of latitude on the Hudson River. The Royal Commission, already noted, after determining the northeastern station, proceeded to mark the exact location of the eastern point of the line between the two States. The report of the Commission is interesting as showing the line of reasoning used in selecting the several points and is as follows:

> City of New York, the 7th day of October, 1769.
>
> "The Agents on the part of both Colonies, having offered to the Court[1] all that they thought necessary or proper in Support of their respective Claims, and the Court having considered the Same, Do find,
>
> "That King Charles the Second by his Letters patent bearing date the twelfth day of March, 1664, did Grant and Convey to his Brother the Duke of York, All that Tract of Country and Territory now

[1] The Court, being the Royal Commission appointed by the King of England.

Called the Colonies of New York and New Jersey; and that The said Duke of York afterwards, by his Deed of Lease and Release bearing date the 23d and 24th Days of June, 1664, did Grant and Convey to Lord Berkeley of Stratton and Sir George Carteret, that part of the Aforesaid Tract of Land Called New Jersey. The Northern Bounds of which in said Deed are described to be 'to the Northward as far as the Northernmost Branch of the said Bay or River of Delaware which is in 41 deg. 40 min. of Latitude and Crosseth thence in a Straight Line to Hudson's River in 41 deg. of Latitude.'

"We further find among the many Exhibits a Certain Map compiled by Nicholas John Vischer, and published not long before the aforesaid Grant from the Duke of York, which we have reason to believe was Esteemed the most Correct Map of that Country at the Time of the said Grant, on which Map is Laid down a Fork or Branching of the River then Called Zuydt River or South River now Delaware River, in the Latitude of 41 deg. and 40 min., which Branch we Cannot doubt was the Branch in the Deed from the Duke of York Called the Northernmost Branch of the said River, and which in the Deed is said to lye in the Latitude of 41 deg. and 40 min. And from a Careful Comparison of the several Parts and Places Laid down on the said Map, some of which, more Especially towards the Sea Coast and on the Hudson's River we have reason to believe were at the time well known. The Distance of the said Branch from the Sea Shore on the South, and the Relative situation of the same with regard to other places and the lines of Latitude as they appear to be laid down on the said Map at that and other places in the Inland Country: We are of the

Old Map of New Jersey, about 1650

opinion that the said Branch so laid down on the said Map, is the Fork or Branch formed by the Junction of the Stream or Water Called the Mahackamack, with the River Called Delaware or Fishkill, and that the same is the Branch Intended and referred to in the before mentioned Deed from the Duke of York, as the Northern Station at the River Delaware, which Fork or Branch we find by an observation taken by the surveyors appointed by the Court, to be in the Latitude of 41 deg. 21 min. and 37 seconds.

"We are further of the opinion that the Northern Station at Hudson's River being by the words of the said Deed from the Duke of York, Expressly Limited to the Latitude of 41 deg. should be fixed in that Latitude, which Latitude we have caused to be taken in the best manner by the Surveyors appointed by the Court, and which falls at a Rock on the West Side of Hudson's River marked by the said Surveyors, being 79 Chains and 27 Links to the Southward on a Meridian from Sneydon's House, formerly Corbet's.

"*It is Therefore* the final Determination of the Court That the Boundary or Partition Line between the said Colonies of New York and New Jersey, be a direct and straight Line from the Said Fork at the Mouth of the River Mahackamack, in the Latitude of forty-one degrees twenty-one minutes and thirty-seven seconds to Hudson's River at the said Rock, in the Latitude of forty-one degrees as above described.

(Signed) "CHAS. STEWART,
"ANDREW ELLIOT,
"ANDREW OLIVER,
"JARED INGERSOLL."

"Samuel Holland and Charles Morris, Esquires, two of the members of the Court not Concurring in a part of the foregoing determination, viz., That part respecting the Station at Hudson's River, desired to have their Reasons for such their Dissent entered on the Minutes of our Proceedings, which was allowed and they are as follows:

"The Northern Boundary of the Province of New Jersey, is the matter Submitted to our Consideration and to Ascertain the Extremities of the Partition Line upon Hudson's and Delaware Rivers.

"In doing this We are to proceed upon Principles of Justice and Equity, having respect to the Proofs. This we apprehend to be (the) Language and Intent of (our) Commission and It is necessary It should be so because the Country was but little known at the Time The Grants to the Duke of York were made, and We must of necessity have recourse to the ancient Maps which were in being at Time of making these Grants.

"It is difficult to ascertain with precision what Lands passed to the Duke of York by his Grant, Either from the Express Words of the Grant or by any Maps of the Country that appear to us to have been then extant. Nor is it probable that the Duke or his Grantees were better Informed when He Conveyed New Jersey to Berkley and Carteret; the best Lights we have on this Matter are the Maps of Vischer.

"The words relative to the Latitude in the Grants to Berkley and Carteret, are words of Description concerning the Northernmost Branch of Delaware, and We do not find upon Inquiry any Branch in the

Latitude mentioned. A Branch nevertheless Seems to be Intended. The Branch nigh to that Latitude is Mahackamack and which, from a view of this Ancient Map we are Induced to believe was the North Partition point intended by the Parties, and think in Justice and Equity ought to be so determined, because a Line from Hudson's River to the Branch at Easton, claimed on the part of New York, or to that of the Poughpaxtonk and Mohawk Branches claimed by New Jersey, would Involve many of his Majesty's subjects in Absolute Ruin who hold respectively under Each Government.

"It is therefore upon this principle The Point on Hudson's River we apprehend ought also to be fixed for as It appears by Vischer's Map that the Latitude of forty-one on Hudson's River, which Map We apprehend was the Guide and direction to the Duke in forming his Grants to Berkley and Carteret. This Map, ascertains the Latitude of forty-one on the upper part of the Manhattan's Island.

"If the Country therefore was vacant we should not Hesitate in Declaring that the Latitude of forty-one as laid down in the Ancient Maps would in Equity be the Station on Hudson's River, and more Especially because We have had abundant Experience in our own Departments to Observe that the Ancient Geographers find their Latitudes in these parts of the Continent Several Miles more Southerly than they are found to be by more modern Observations. In Tenderness therefore to the New Jersey Settlers, We are Inclined to a more Northern Station and in settling the place where, Consider that before the Contested Territory was planted a Place due West of Frederick Phillips Mills gained the Reputation as the Station Point upon Hudson's

River, and a Line from this Station which appears to be Anciently fixed by the Governments concerned will be the Least detrimental to the Settlers, and one more Northerly will Comprehend many Farms in a populous Neighborhood held under New York by Ancient Patents. We Cannot help being of Opinion That a Line thence to the Mahackamack Branch will be the most Just and Equitable of any We can fix upon agreeable to the design of the Royal Commission which We imagine will be most Conformable to His Majesty's Gracious Intentions to His Subjects in both Provinces.

(Signed) "SAMUEL HOLLAND,
"CHARLES MORRIS."

Notwithstanding the report of the Royal Commission, this matter was not actually settled, however, until September 22, 1772, when the Assembly passed an act defining the boundary line and authorizing the appointment of Commissioners to definitely mark the same, which act was approved by the King in council September 1, 1773.[1] The Commissioners so appointed reported on November 13, 1774, that the line had been marked according to the award of the Royal Commission. In 1874 a survey of the boundary lines was made under the authority of a joint commission of the two States and of the United States, and it was found that instead of the 1774 line running in a straight line, it was 2,415 feet south of the straight line at Greenwood Lake, and that many of the monuments were lost. Therefore, in 1881, a joint commission representing New Jersey and New York marked the line, by permanent monuments adhering to the orig-

[1] Paterson's Laws of New Jersey, p. 7; Ibid, p. 22.

inal survey of 1774, and in their report of 1883 they state that the northwestern station point is actually in latitude 41° 21′ 22.63″ north and longitude 74° 41′ 40.70″ west from Greenwich; while the station point on the Hudson River is in latitude 40° 59′ 48.17″ north and longitude 73° 54′ 11″ west from Greenwich.

Eastern Boundary Line Between New York and New Jersey

Probably no boundary line dispute caused more controversy, or was fought harder, than that relating to the exact location of the line in and along the Hudson River and including the ownership of Staten Island. The grant from the Duke of York to Sir George Carteret, dated September 10, 1680, in defining the territory included in that instrument, recited:

> "All that Tract of Land adjacent to New England in the parts of America and lying and being to the Westward of Long Island and Manhattas Island and bounded on the East part by the Maine Sea and part by Hudsons River * * * * * with all the lands Islands Soyles Rivers Harbours Mines etc., * * * and all other Royalties profitts Com'oditys and hereditaments vnto the said p'r'misses belonging or appertaineing with their and every of their app'ten'ces."[1]

There is a legend which states that Governor Nicolls was in a quandary as to the meaning of the grant, wherein it stated that the boundaries of New York should include the "small islands in adjacent waters." Finally,

[1] New Jersey Archives, vol. I (first series), p. 338.

deciding that this designation would include any island which could be circumnavigated within twenty-four hours, he commissioned Captain John Billup to make the attempt. All went well on this trip until the Kill van Kull was reached, where, being unacquainted with the channel, the vessel frequently went aground. Several Indians put out from the shore, and through their assistance Billup was able to safely navigate the channel and complete the task within the specified time. Whether there is any foundation to this story or not, the fact remains that Staten Island was taken under the jurisdiction of the province of New York.

In 1681 Governor Phillip Carteret, representing the East Jersey proprietors, addressed a letter to the Governor of New York demanding the surrender of Staten Island, and followed this up by issuing a proclamation to the inhabitants of the island commanding them to pay allegiance to the Governor of East Jersey. Matters dragged along with the territory in question, however, under control of New York.

In 1806, upon overtures made by the Legislature of New Jersey to the State of New York, Joint Commissioners were appointed to definitely fix the boundary lines between the two States. After a number of conferences, it was found that the New York Commissioners would not agree to any general jurisdictional lines, other than those which they themselves proposed. The essential part of their proposal was that New York should have exclusive jurisdiction over all the waters between the States, "including shores, roads, and harbors within the natural territorial limits of New Jersey." Again, in

1818 and 1824, proposals were made by New Jersey for the settlement of this controversy without results. The matter was finally taken to the United States Supreme Court by the Attorney General of New Jersey, but, before any decision was handed down, New York agreed to another conference. In 1833, under "An Act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York," Commissioners were appointed, who finally agreed upon a boundary line which was approved by both legislatures and ratified by the United States Congress by resolution approved June 28, 1834.

The compact entered into by the two States provided that:

Article I. The boundary line, from a point in the middle of Hudson river, opposite the point of the west shore thereof, in the forty-first degree of north latitude, to the main sea, shall be the middle of the said river, of the bay of New York, of the water between Staten Island and New Jersey, and of Raritan bay to the main sea, except as otherwise especially mentioned.

Article II. The State of New York to retain its present jurisdiction over Ellis' and Bedlow's islands and any other islands in the waters above-mentioned and now under the jurisdiction of that State.

Article III. The State of New York to enjoy exclusive jurisdiction over all the waters of the bay of New York, and over all waters of the Hudson river, lying west of Manhattan island and to the south of the mouth of Spuytenduyvel creek, and of and over the lands covered by the said waters to the low-water mark on the

westerly, or New Jersey, side thereof, subject to the following rights of property and jurisdiction of the State of New Jersey, that is to say:

(1) The State of New Jersey shall have exclusive right of property in and to the land under water, lying west of the middle of that part of the bay of New York, and west of the middle of that part of the Hudson river, which lies between Manhattan island and New Jersey.

(2) The State of New Jersey shall have exclusive jurisdiction over all wharves, docks and improvements on the shores of said State, and over all vessels aground on said shore, or fastened to any wharf or dock, except that said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York.

(3) The State of New Jersey shall have exclusive right to regulate fisheries on the westerly side of said waters; provided, that navigation is not obstructed or hindered.

Article IV. The State of New York shall have exclusive jurisdiction over the waters of the Kill von Kull, between Staten Island and New Jersey, to the westernmost end of Shooter's island, in respect to such quarantine laws, and laws relating to passengers and for executing the same; the said State shall also have exclusive jurisdiction for like purposes over the waters of the sound from the westernmost end of Shooter's island to Woodbridge creek, as to all vessels bound to any port in the State of New York.

Article V. The State of New Jersey shall have exclusive jurisdiction over all the waters of the sound between

Staten Island and New Jersey, south of Woodbridge creek, and over all waters of Raritan bay, lying westward of a line drawn from the lighthouse at Prince's bay to the mouth of Matawan creek, subject to the following rights of property and jurisdiction of the State of New York, that is to say:

(1) The State of New York shall have the exclusive right of property in lands under water lying between the middle of the said waters and Staten Island.

(2) The State of New York shall have the exclusive jurisdiction of all wharves, docks and improvements along the shores of Staten Island, and of all vessels aground on said shores, or fastened to such wharves or docks, except that said vessels shall be subject to the quarantine or health laws, and laws relating to passengers of the State of New Jersey.

(3) The State of New York shall have exclusive right to regulate fisheries between the shores of Staten Island and the middle of said waters; provided, that the navigation of said waters is not obstructed or hindered.

Articles VI and VII. Provide that civil and criminal process for crimes committed within either State may be served in any part of the said waters, except such person or property be aboard a vessel aground on the shore, or fastened to the wharf of the other State, or unless such person or property be under arrest or seizure by virtue of the process of authority of the other State.

While this boundary line was vague and indefinite, so far as its actual location was concerned, it answered the purpose for a long time. With the increase in the number of oyster beds laid out in Raritan Bay, however,

it became necessary to locate and monument the actual line. Therefore, in 1887, a joint commission was appointed to do this, the report thereon being made to the legislature in December, 1889. By an Act of 1891, the Riparian Commission was directed to, every three years, cause an examination to be made of the monuments marking the boundary line and to restore or replace any that were out of place or destroyed.

Boundary Line Between Pennsylvania and New Jersey

As early as 1721 certain residents of Pennsylvania and New Jersey petitioned the English Lords Commissioners of Trade and Plantations for grants of the islands in the Delaware River lying between the two States. While many of these were issued by the Crown upon payment of quit-rents, the jurisdiction over the lands was not definitely determined, and this led to much disorder and uncertainty.

In 1772 commissioners representing Pennsylvania and New Jersey were appointed to determine the rights of the respective States in these islands, and their report was ratified by the Legislature of New Jersey on May 27, 1783.[1] This agreement provided that the Delaware River should remain a common highway, "Equally free and open for the use, benefit and advantage, of the said contracting parties," reserving to each legislature the right to regulate fishing on, or adjacent to, its own shores. Each State was given concurrent jurisdiction upon the waters of the river. Every vessel, while lying at anchor before any city or town, in either State, where

[1] Paterson's Laws of New Jersey, pp. 47-49.

she intends to, or had already, loaded or unloaded was to be within the jurisdiction of such State. In criminal cases the offenders were to be tried in the State in which first arrested, or prosecuted.

The islands in the Delaware River were assigned to the respective States in accordance with the terms of the agreement. From the Falls of Trenton northward the islands were, as to jurisdiction, "deemed and considered as parts and parcels of the State to which such insulated dry land doth lie nearest." Below the Falls of Trenton, jurisdiction of the following islands was in the State of Pennsylvania, namely, Bile's Island, near Trenton; Windmill Island, opposite Philadelphia; League Island, Mud or Fort Island, Hog Island and Little Tinnicum Islands. The State of New Jersey was given jurisdiction over Biddle's, or Newbold Island, Burlington Island, Petty's Island, Redbank Island, Harmanus Helm's Island, Chester and Shiver's Islands.

By the act of November 26, 1783, the islands which were assigned to the jurisdiction of New Jersey were annexed to the counties and townships to which they were contiguous, except Petty's Island, which was assigned to Newton township.

The agreement regarding the islands above the Falls of Trenton does not appear to have been entirely satisfactory for in 1786[1] we find a ratification of a new agreement by the commissioners of the respective States, in which these islands are specifically named and the counties and townships to which they are annexed mentioned as follows:

[1] Paterson's Laws of New Jersey, pp. 50-51.

"the following islands, opposite the County of Bucks and the townships hereafter named, that is to say, opposite to the Falls township, Bird's island; opposite to Lower Makefield township, Slack's three islands, Duer's island, and Harvey's lower island; opposite to Upper Makefield township, Harvey's upper island and Lowne's island; opposite to Solebury township; Smith's island and bar, and Paxton's island and bar; opposite to Tinnicum township, Pratt's two islands, Wall's island, Resolution island, Marshall's island, Wall's two islands, Fishing island, and Pennington's island; opposite to Nockamixon township, Loughley's island; and opposite the county of Northampton and the townships hereafter named, that is to say, William's township, Pohatcung island, Shoemaker's island, and Loor's island; opposite to the Forks township, Easton island; opposite to Mount Bethel, Mason's island and bar, Mason's island, Foul Rift island, M'Elhany's island, and Attin's two islands; opposite to Lower Smithfield, Handy's island and bar, Goodwin's two islands, Shawanagh, or I. and B. Van Campen's island, H. Depew's island and two bars, Chamber's island, and Van Oken's island; opposite to Delaware township, Swartwood's island, and Isaac Van Campen's island; opposite Upper Smithfield township, Punkey's island and five bars, shall be annexed to the State of Pennsylvania, and considered parts and parcels thereof.

And that the following islands, opposite to the county of Hunterdon, in the State of New-Jersey, and the township hereafter named, that is to say, opposite to the township of Trenton, Yard's island, Mott's two islands, and Gould's two islands; opposite to the township of Hopewell, Stout's island; op-

posite to the township of Amwell, Smith's Mill island, Coryell's island, Holcombe's two islands, Eagle island, and Bull's island; opposite to the township of Kingwood, Rush island, Ridge's island, Shyhawk's three islands, Pinkerton's island, and Man of war island; opposite to the township of Alexandria, Stull's island, Lowrey's island, and Loughey's island and bar; and opposite to the county of Sussex, and the townships hereafter named, that is to say, opposite to the township of Greenwich, Rope's island, Chapman's island, Stout's island and bar, and Bar island; opposite to the township of Oxford, Capush island, Foul Rift island, and Mack's island; opposite to the township of Knowlton, Mack's island and three bars, and Gap island; opposite to the township of Wallpack, Hoop's two islands, Chamber's island, A. Van Campen's fishing island, Opaughanaugh island, and Necesseas island; opposite to the township of Sandyston, Nominack island and Westfall's, island; opposite to the township of Montague, Minisink island, Quick's two islands and bar, Shabbacung great island and bar, and Westfall's two islands, shall be annexed to the State of New Jersey, and hereafter be considered as parts and parcels thereof, agreeably to a map or chart of the said river, and description of the several islands and insulated dry land therein, made under our direction, by Mr. Reading Howell, surveyor, and herewith exhibited to each State.

Secondly. That all other islands, which may hereafter be formed within said river, between the falls of Trenton and the station point, or north-west corner of the State of New-Jersey aforesaid, shall hereafter be deemed and considered as parts and parcels of the State, to which such islands may be nearest."

Boundary Line Between Delaware and New Jersey

The dispute as to the exact territorial limits and jurisdiction in the Delaware River, between the Pennsylvania-Delaware line and Reedy Island arose as a result of the State of Delaware attempting to prevent citizens of New Jersey from fishing in the waters thereof. While this controversy was principally a matter of the right to take fish within the supposed limits of New Jersey, it also involved title to certain riparian lands.

Delaware claimed title to the soil or bottom of the river within the twelve mile circle around New Castle under the charter from the Duke of York to William Penn, dated August 24, 1682. This grant from Charles II. to the Duke of York contained the following provisions:

> "All that the Town of New Castle, otherwise called Delaware, and Fort therein or thereunto belonging, situated, lying and being between Maryland and New Jersey, in America; and all that tract of land lying within the compass or circle of twelve miles above the said town, situate, lying and being upon the River Delaware, and all the Islands in the said River of Delaware, and the said river and soil thereof lying north of the southermost part of said circle of twelve miles about the said town; and all that tract of land upon Delaware River and Bay, beginning twelve miles south from the said town of New Castle, otherwise called Delaware, and extending south to Cape Lopan; together with all the lands islands, soils, rivers, harbours, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings, and fowlings, and all other royalties,

> privileges, profits, commodities, and hereditaments, to the said town, fort, tracts of land, island and premises, or to any or either of them belonging or appertaining, with their and every appurtenances, situate, lying, and being in America, and all our estate, right, title and interest, benefit, advantage, claim and demand whatsoever, of, in, or to the said town, fort, lands, or premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof, together with the yearly and other rents, revenues, and profits of the premises, and of every part and parcel thereof;"

New Jersey claimed under the several court decisions that the King of England had no right or power to grant title to the soil under tidal waters (see pp. 73-89) and that the fishing rights were not subject to conveyance or grant by the King.

In 1873 commissioners were appointed under an "Act for the settlement of the territorial limits of the State of New Jersey and the State of Delaware."[1] The commissioners representing Delaware were Joseph P. Comegys, William G. Whiteley and Edward C. Martin, while those for New Jersey were Abraham Browning, Courtland Parker and Albert H. Slape. Nothing, however, came of this conference since the Delaware commissioners in their report dated July 2, 1874, practically refused to arbitrate. In 1876, therefore, the Legislature of New Jersey authorized the Attorney General to "institute and prosecute, in the Supreme Court of the United States, a suit in equity, or an action at law, by the State of New Jersey against

[1] Laws of New Jersey, 1873, part 1, p. 30.

the State of Delaware, to ascertain, determine and settle the true territorial boundary line between the said States and the extent of the jurisdiction of each of said States in and on the said river."

An injunction was obtained, so far as the Delaware River was concerned, the limits of the river by agreement being a line drawn from the Cohansey light-house to Bombay Hook Point. Notwithstanding the fact that heretofore it had been generally understood that the territorial line in Delaware Bay was the middle thereof, the Delaware authorities now began to molest citizens of New Jersey fishing in the bay within the accepted limits of their State. The retaliatory measures pursued by the State of Delaware promised to involve the two commonwealths in further litigation, for it should be borne in mind that the injunction obtained by New Jersey against the Delaware authorities, as regards their interference on the Delaware River, was still pending and in force. A new commission was appointed in 1903 to settle the points in dispute. An agreement was drawn up by this joint commission defining the respective rights of the two States which was adopted by the Legislature of New Jersey in 1903, but failed of adoption by Delaware at that time. The agreement was again brought up in 1905 and passed the Legislatures of both States. The following are the essential points of the agreement:

1. Concurrent jurisdiction on the Delaware River between the respective low water lines is granted to each State in civil and criminal processes, unless the person or property be on board a vessel grounded upon or fastened to the shore or a wharf in either State.

2. Reedy Island and Pea Patch Island are to be exclusive territory of the State of Delaware.[1]

3. Common rights of fishing are granted to the citizens of each State when they do not conflict with any private fishery rights heretofore granted.

4. Uniform laws to regulate fishing shall be enacted by each State within two years and in the meantime the existing laws of the several States shall remain in force.

5. Each State on its own side of the river may continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands under the laws of the respective States.

6. That the agreement after ratification by the Legislatures of the respective States was to be submitted to Congress for approval. Upon the ratification the suit then pending in the Supreme Court of the United States was to be withdrawn.

This agreement was ratified by the Congress of the United States in 1905, thus settling the territorial limits, but there still remains the adoption of uniform fishing laws, which, while passed by the Legislature of New Jersey in 1907, have not been adopted by Delaware.

[1] Pea Patch Island was formed in the Delaware Bay, about 1675, from the sinking of a vessel loaded with peas, and by gradual alluvion its surface was raised above high water. It is located 600-800 feet nearer the New Jersey shore than the Delaware shore, and the main ship channel was between Pea Patch and the Delaware shore. By virtue of warrants from the Council of Proprietors of West Jersey, a survey of this island was made to Edward and Clement Hall and recorded in the books of the Proprietors in 1784. Subsequently the title passed to Dr. Henry Gale, who immediately established a fishery on the island. This conveyance was confirmed by the Legislature of New Jersey by act of November 24, 1831. Delaware on the other hand claiming title had ceded this island to the United States, but no attempt to take possession was made by the Federal authorities until about

1835, when a forcible entry upon the land was made. At the November Term, 1836, of the Circuit Court of the United States for New Jersey the matter came before Judge Baldwin and the decision of the jury was in favor of the New Jersey claimant (John Den ex. dem. Gale vs. Bealing). In 1847 Secretary of War Marcy entered into an agreement with James Humphrey, who had succeeded to the Gale title, whereby the question of ownership of Pea Patch Island should be submitted to John Sergeant, as arbitrator (Senate Ex. Doc. No. 140, 25th Congress, 2d Session) (1838) and Senate Ex. Doc. No. 21, 30th Congress, 1st Session (1848). The award of the arbitrator was in favor of the United States. This decision was founded principally upon the deed of August 24, 1682. It should be noted, however, that this deed conveyed only property and did not grant any rights of government. It was therefore contrary to the reasoning in Martin vs. Waddell (see p. 81) and Corfield vs. Coryell (4 W. (Cir. Court), p. 384). In the latter case Mr. Justice Washington said, "the effect of the revolution, and of the treaty of peace, was to extend the limits of those States [New Jersey and Delaware] to the middle of the bay, from its mouth upwards."

As the United States was in possession of the island for the purpose of using it as a site of a fortification, no attempt was made by New Jersey to dispute the claim. The provision of this second condition was merely as regards the fee in case the United States should abandon the use of Pea Patch Island; Reedy Island was never claimed by New Jersey. (See also I Zabriskie, pp. 166-169.)

RIGHTS AND TITLE TO RIPARIAN LANDS

In the preceding pages we have followed the various stages, or steps, upon which the titles to the upland are founded. It is essential, to a clearer understanding of the foundation upon which the right of New Jersey to its riparian land is based, to study the original status of these tidal lands, as well as the legal decisions relating to this subject.

In order that, in studying the various court decisions, we may have a clear understanding of the several terms used in these opinions, the judicial definitions of such words as "high-water mark," "low-water mark," "the shore," etc., are given below. It is absolutely necessary that these words should be carefully and correctly used, since, to the ordinary layman, they are often considered indiscriminately, or from an erroneous standpoint.

> "High-water mark" is the line to which a tidal stream rises for a period sufficient to deprive the soil of vegetation and render it valueless for agriculture.[1] This mark depends upon the rise and fall of the tide. It must be noted, however, that at different times of the year, or at successive phases of the moon, the height of the tides vary considerably so that we must examine the authorities to see at what particular time, or phase, the mark is to be ascertained.
>
> The law takes notice of three kinds of tides: the "high spring tides," which occur at the time of

[1] See Hale, De Jure Maris; Paine Lumber Co. vs. U. S., 55 Fed. Rep., 854; Carpenter vs. Board of Com. of Minn., 55 Minn., 513; 58 N. W., 295.

the equinoxes, the "spring tides," which happen twice every month, at the full and change of the moon, and the "neap," or "ordinary tides," which happen between the full and change of the moon twice in twenty-four hours. The tides which take place daily would seem to be the logical ones to consider. "Hale states the rule of the common law to be that the shore is that land only which is usually overflowed by ordinary tides."

"Low-water mark" is the point to which the tidal stream recedes at its lowest stage, that is, during "neap tides."

"The Shore" is, in legal terminology, strictly only applied to the space between high and low-water marks, or, in other words, the land which is alternately covered and left dry by the rising and falling of the tide. It is, however, sometimes used on non-tidal streams in referring to the bank, or that portion thereof, which touches the water.

"Shore Line." The line marking the edge of the water at ordinary high tides.

"Shore Owner" or "Riparian Owner." The owner of the upland above and adjoining the shore line, viz., above high-water mark. In its strictly applied common law sense it means the owner of the *ripa* or bank of a stream not navigable.

"Riparian Lands." Lands below high-water mark.

Owing to the variations in the several State laws regarding the status of lands along the navigable waterways and the ocean, the term "riparian rights" has received a varied interpretation. "Riparian rights, according to the strict meaning of the term, are such as follow,

or are connected with, the ownership of the banks of streams or rivers (riparian from the Latin *ripa,* a river bank). Those whose lands border upon tide waters are called 'littoral' proprietors (from the Latin *litus,* the sea shore), and there appears to be no word or phrase of sufficiently broad meaning to include both riparian and littoral, although each is sometimes used to denote the other." As will be noted, the word "riparian" relates to the river bank and has nothing in its derivation to include reference to soil under water along this bank, so that when extended to embrace land in the stream, its authority, therefore, rests upon "grant or presumption of law." However, in New Jersey the term riparian is now generally used to distinguish not only lands on tide waters, and along the ocean, but also on non-tidal streams. These rights are those which the State possesses in the soil, from high water mark to the limit of its territorial jurisdiction.

In considering the subject of waterways and their improvements the legal and statutory status in regard to public water must be examined. The several States differ as to the rights of riparian owners to such an extent that what may be justified in one locality would not apply to another section. The authority granted to riparian owners by legislative, or local, enactment, to extend wharves out from the shore line is based on no general laws, but varies greatly in different States. The only controlling factor in this connection is that founded upon the public rights, *jus publicum,* of navigation and the federal statutes tending to preserve and develop this right.

The Lords Proprietors claimed jurisdiction of the present State of New Jersey, both as to lands and government. In the "Concessions and Agreements" (Section iiij) provision was made for the public needs in connection with navigation as follows:

> "Section iiij—ITEM wee doe alsoe graunt convenient proporc'ons of Land for highwaies and for Streets not exceeding 100 foote in bredth in Cities Town's and Villages &c. for Churches fforts Wharfes Keyes Harbours and for publique houses."[1]

In Chapter VI of the "West Jersey Concessions" of March 3, 1676-7,[2] there was a similar provision regarding the granting of land for "Wharves, Keys, Harbours," and also an express provision that all such lands shall be free from "all Rents, Taxes and other Charges and Duties whatsoever; as also that the Inhabitants of the said Province, have free Passage through, or by any Seas, Bounds, Creeks, Rivers, Rivelets in the said Province, through or by which they must necessarily pass, to come from the main Ocean to any Part of the Province aforesaid."

According to these latter Concessions all inhabitants of the Province of West Jersey were to have the liberty of fishing in the Delaware River, or on the sea coast.

As has been noted in a previous chapter, the Proprietors in 1702 relinquished their claim to the rights of Government, but retained their rights of property. The province now became a royal colony, and the inhabitants

[1] New Jersey Archives, vol. I (first series), p. 42.
[2] New Jersey Archives, vol. I (first series), p. 249.

thereof British citizens, invested with all the rights of freemen and subject to English laws. The "Grants and Concessions" of the Lords Proprietors, "Concessions and Agreements of the Proprietors, Freeholders and Inhabitants of West New Jersey" and "Fundamental Constitution for the Province of East Jersey," had no further validity or binding force. The only form of government other than a few simple conditions in the agreement of surrender, are those contained in the letter of instructions to the Governor appointed by the Crown and in his Commission.

The title to the soil of the tidal waters of the colony was by the common law of England invested in the King, as one of the *jura regalia,* or rights of the Crown, by reason of and for the exercise of sovereignty. This right undoubtedly passed from the King to the Duke of York, not under the grant of the lands, but under the grant of government. While the Duke of York received a patent for the territory embracing what is now the State of New Jersey, including the right to erect a government therein, it is questionable if he could himself, by any grant, convey this right to others. Tanner aptly states the case as follows:

> "The right to institute government was, according to the English law, a prerogative right inherent in the crown which could only be conveyed to others than the king by his express grant and patent. This was the principle which was held from the time of the quo-warrantos of Edward I., and though it may have been disregarded in some cases, it was nevertheless accepted in theory. The release of New Jer-

> sey was merely a private transaction between James and Berkeley and Carterett, and the king had borne no part in it."[1]

The only specific notice, of which we have a record, that this action of a mesne lord was acceptable to the King is the letter dated June 13, 1674, in which he advises the inhabitants of the colony of New Jersey to yield obedience to the government of Sir George Carteret, "who hath the sole Power under us, to settle and dispose of the said Country, upon such Terms and Conditions as he shall think fit."[2]

It has been held by many that the title to the rivers and the beds thereof, however, was held since Magna Charta by the Crown in trust for the whole people, subject to certain common rights, including that of navigation. This is aptly stated by Justice Carpenter in Gough vs. Bell (1850), who said:[3]

> "It must be admitted that, in the country from which we have chiefly drawn our rules of law, the doctrine now to be considered has long been well established. According to the common law rule, the boundary of the riparian owner, in streams above the tide, extends *ad filum medium aquae:* he is *prima facie* the proprietor of half of the land covered by water. If the same person be the owner of lands on both sides of the river, he owns the whole river to the extent of the length of his lands, subject to the *jus publicum,* if the river be navigable and a highway. Again, on the seashore, the bays and arms of the

[1] Tanner, the Province of New Jersey (1908), p. 127.
[2] New Jersey Archives, vol. I (first series), p. 154.
[3] 2 Zabriski, p. 472.

> sea, and in navigable rivers where the tide ebbs and flows, the title of the riparian owner (meaning by this the owner of lands bounded by such waters), unless by royal grant or prescription, extends only to the shore or high water mark. The shore, or space between ordinary high and low water mark, as well as the bed of the river or arm of the sea, is said to be vested in the King, in trust for the common benefit of all his subjects."

The rights of the King were restricted and limited to granting it only for public uses. This restriction naturally applied in every patent issued by the Crown, even if not specifically mentioned therein. On the other hand

> "Parliament representing the people could in the exercise of its unlimited power with the assent of the King dispose of such lands absolutely."[1]

When, by the Treaty of Paris, England renounced sovereignty over the American Colonies, each State or Colony received all the sovereign rights which had heretofore been vested in the Crown, and among these sovereign prerogatives was that of control over the tidal waters around, or within her boundaries, to be held for the benefit of the whole people, for the same public purposes and subject to the same common rights. Under the Constitution, the Legislature, representing as it does the sovereignty of the State and the common people, has absolute control over the soil under tide waters. Upon the adoption of the Federal Constitution, each State ceded to the general government the right "to regulate

[1] Attorney-General Robeson in opinion dated March 15, 1867.

commerce with foreign nations and among the several States, and with Indian tribes."

This has been the view taken of the subject in all of the decisions of the higher courts, both in this State and in the United States Courts, as will be noted in the several citations below.

Chief Justice Kirkpatrick, of the Supreme Court of New Jersey, in 1821, in the case of Arnold v. Mundy,[1] one of the celebrated cases on the riparian rights question in the State, said:

> "And I am further of the opinion, that, upon the Revolution, all of these royal rights became vested in *the people* of New Jersey, as the sovereign of the country, and are now in their hands; and that they, having, themselves, both the legal title and the usufruct, may make such disposition of them, and such regulations concerning them, as they may think fit; that this power of disposition and regulation must be exercised by them in their sovereign capacity; that the legislature is their rightful representative in this respect, and, therefore, that the legislature, in the exercise of this power, may lawfully erect ports, harbors, basins, docks and wharves on the coasts of the sea and in the arms thereof, and in the navigable rivers; that they may bank off those waters and reclaim the lands upon the shores; that they may build dams, locks and bridges for the improvement of navigation, and in ease of passage; that they may clear and improve fishing places, to increase the product of the fishery; that they may create, enlarge and improve oyster beds, by planting oysters therein in order to procure a more ample supply; that they may do all these things themselves,

[1] 1 Halstead, 94.

at the public expense, or they may authorize others to do it by their own labor, and at their own expense, giving them reasonable tolls, rents, profits or exclusive and temporary enjoyments; but still this power, which may thus be exercised by the sovereignty of the State, is nothing more than what is called the *jus regium,* the rights of regulating, improving, and securing for the common benefit of every individual citizen."

Mr. Chief Justice Taney, of the United States Supreme Court, in 1842, in Martin v. Waddell,[1] said:

"The English possessions in America were not claimed by right of conquest, but by right of discovery. For according to the principles of international law, as then understood by the civilized powers of Europe, the Indian tribes in the new world were regarded as mere temporary occupants of the soil, and the absolute rights of property and dominion were held to belong to the European nations by which any particular portion of the country was first discovered. * * * * * * *"

"The country mentioned in the letters patent (to the Duke of Yorke) was held by the king in his public and regal character as the representative of the nation, and in trust for them. The discoveries made by persons acting under the authority of the government were for the benefit of the nation; and the crown, according to the principles of the British constitution, was the proper organ to dispose of the public domains; and upon these principles rest the various characters and grants of territory made on this continent."

[1] 16 Peters, 369.

"For when the Revolution took place, the people of each State became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government. A grant made by their authority must therefore manifestly be tried and determined by different principles from those which apply to grants of the British crown, when the title is held by a single individual in trust for the whole nation."

"The dominion and property in navigable waters, and in the lands under them, being held by the King as a public trust, the grant to an individual of an exclusive fishery in any portion of it, is so much taken from the common fund intrusted to his care for the common benefit. In such cases, whatever does not pass by the grant, still remains in the crown for the benefit and advantage of the whole community. Grants of this description are therefore construed strictly—and it will not be presumed that he intended to part from any portion of the public domain, unless clear and especial words are used to denote it. But in the case before us, the rivers, bays, and arms of the sea, and all prerogative rights within the limits of the charter, undoubtedly passed to the Duke of York, and were intended to pass, except those saved in the letters patent. The words used evidently show their intention; and there is no room, therefore, for the application of the rule above-mentioned."

"The questions upon this charter (The Grant to the Duke of York) are very different ones. They are: Whether the dominion and propriety in the navigable waters and the soils under them passed

as a part of the prerogative rights annexed to the political power conferred on the duke. Whether in his hands they were intended to be a trust for the common use of the new community about to be established; or private property to be parcelled out and sold to individuals for his own benefit. And in deciding a question like this, we must not look merely to the strict technical meaning of the words of the letters patent. The laws and institutions of England, the history of the times, the object of the charter, the contemporaneous construction given to it, and the usages under it, for the century and more which has since elapsed, are all entitled to consideration and weight. It is not a deed conveying private property to be interpreted by the rules applicable to cases of that description. It was an instrument upon which was to be founded the institutions of a great political community; and in that light it should be regarded and construed."

"Taking this rule for our guide, we can entertain no doubt as to the true construction of these letters patent. The object in view appears on the face of them. They were made for the purpose of enabling the Duke of York to establish a colony upon the newly discovered continent, to be governed, as nearly as circumstances would permit, according to the laws and usages of England; and in which the duke, his heirs and assigns, were to stand in the place of the king, and administer the government according to the principles of the British constitution. And the people who were to plant this colony, and to form the political body over which he was to rule, were subjects of Great Britain, accustomed to be governed according to its usages and laws."

* * * * * *

"The estate and rights of the king passed to the duke in the same condition in which they had been held by the crown, and upon the same trusts. Whatever was held by the king as a prerogative right, passed to the duke in the same character. And if the word 'soils' be an appropriate word to pass lands covered with navigable water, as contended for on the part of the defendant in error, it is associated in the letters patent with 'other royalties,' and conveyed as such. No words are used for the purpose of separating them from the *jura regalia,* and converting them into private property, to be held and enjoyed by the duke, apart from and independent of the political character with which he was clothed by the same instrument. Upon a different construction, it would have been impossible for him to have complied with the conditions of the grant. For it was expressly enjoined upon him, as a duty in the government he was about to establish, to make it, as near as might be agreeable in their new circumstances, to the laws and statutes of England; and how could this be done, if in the charter itself this high prerogative trust was severed from the regular authority? If the shores, and rivers, and bays, and arms of the sea, and the land under them, instead of being held as a public trust for the benefit of the whole community, to be freely used by all for navigation and fishery, as well for shell-fish as floating fish, had been converted by the charter itself into private property, to be parcelled out and sold by the duke for his own individual emolument? There is nothing, we think, in the terms of the letters patent, or in the purposes for which it was granted, that would justify this construction. And in the judgment of the Court, the land under the navigable waters passed to the grantee as one of the

royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the crown."

"* * * * And when the people of New Jersey took possession of the reins of government, and took into their own hands the powers of sovereignty, the prerogatives and regalities which before belonged either to the crown or the parliament became immediately and rightfully vested in the State."

In Gough v. Bell, decided by the New Jersey Supreme Court in 1850[1], Chief Justice Green said in connection with the extent of the title of the State to the soil of navigable rivers and its limits:

"The ancient rule of the common law is, that the title of owners of land bounded by the sea, or by navigable rivers where the tide ebbs and flows, extends to ordinary high water mark only. The title to the *shore* between ordinary high and low water mark, as well as the title to the soil under the water, belongs, *prima facie,* to the sovereign. *Hale de Jura Maris, part 1, cap. 4; case of the River Banne, Davies, 152; Woolrych on Waters 20; 3 Kent Com. (2d ed.), 427, 431; Arnold v. Mundy, 1 Halst., 67; Martin v. Waddell, 16 Peters, 367; Pollard's lessee v. Hagan, 3 Howard, 212.*

"This title, which by the common law of England is vested in the king, upon the revolution, became vested in the people of the state. With this modification, growing out of the form of government, the rule of the common law prevails here, ex-

[1] 2 Zabriskie, pp. 455-457.

cept so far as it has been modified by statute or by local common law. In this state, the rule of the common law, as to the limits of the right, remains unaltered. High water mark constitutes the boundary between the proprietary and the sovereign titles. This point is fully settled by the cases already cited. *Arnold v. Mundy, 1 Halst., 1; Martin v. Waddell, 16 Peters, 367.*"

* * * * * *

"It is said in the books, that the title to the soil of navigable rivers, and to the shores of the sea, is a branch of the king's prerogative, of which he cannot divest himself; that the title is in him in trust for the public; that the rights of navigation and of fishery, and the use of the shores of the sea, are common rights, of which the people cannot be divested, except by their consent. Hence they cannot be aliened by the crown. * * *."

"The authorities, upon this point, are by no means uniform, though the better opinion appears to be, that, since *Magna Charta,* the English sovereign has no power to alien the public domain."

"Whatever doubts may exist in regard to the power of the king to dispose of common rights, there exists none in regard to the power of parliament. Parliament not only may, but does, exercise the power of aliening the public domain, of disposing of common rights and of converting arms of the sea, where the tide ebbs and flows, into arable land to the utter destruction of the common rights of navigation and fishing."

"This power is attributed to the omnipotence of parliament, and it is said that no such omnipotence is vested in the legislature. The legislature, it is

true, is not omnipotent in the sense in which parliament is so. It is restrained by constitutional provisions. Its powers are abridged by fundamental laws. But it would seem clear upon principle, that in every political existence, in every organized government, whatever may be its form, there must be vested somewhere ultimate dominion, the absolute power of disposing of the property of every citizen. In this consists eminent domain, which is an inseperable attribute of sovereignty. This constitutes the omnipotence of parliament. If the legislature may dispose of the property of each individual citizen for the public good, it would seem to be no greater exercise of power to dispose of public property or the common rights of all the people for the same end. The objection to an alienation of the public domain by the king is, that he is but a trustee for the community. But the legislature are not mere trustees of common rights for the people. These rights are vested in the people themselves; the legislature, in disposing of them, act as their representatives, in their name and in their stead. The act of the legislature is the act of the people, not that of a mere trustee holding the legal title for the public good."

Justice Elmer, in 1856, in The State v. Mayor and Common Council of Jersey City,[1] defined the public title to certain lands lying under the flow of tide as follows:

"It must now be accepted as the established law in New Jersey, that the right of the owner of lands bounding on a navigable river, extends only to the actual high-water mark, and that all below that

[1] 1 Dutcher, 525.

> mark belongs to the state. The inchoate right, if such it may be called, which the proprietor of the upland has, either with or without a license, to acquire an exclusive right to the property, by wharfing out or otherwise improving the same, gives him no property in the land while it remains under water."

Chief Justice Beasley, in 1870, in the New Jersey Court of Errors and Appeals, in Stevens v. The Paterson and Newark R. R.,[1] after reviewing all the previous decisions and presenting an exhaustive analysis of the legal history and doctrines by which the title of the State is secured and defined, said:

> "The steps which I have thus far taken have led me to this position: that all navigable waters within the territorial limits of the state, and the soil under such waters, belong in actual propriety to the public; that the riparian owner, by the common law, has no peculiar rights in this public domain as incidents of his estate, and that the privileges he possesses by the local custom or by force of the wharf act,[2] to acquire such rights, can, before possession has been taken, be regulated or revoked at the will of the legislature."

The accepted status of the State's ownership in the riparian lands is, now, that the title to all lands below high-water mark is absolute and can be granted as it may see fit to any one, according to such regulations as its Legislature may deem for the public interests.

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[1] 5 Vroom, p. 532.
[2] See Wharf Act, p. 91.

Other than by such concessions and limitations as were placed in the several special acts, [1] granting specified individuals the right to bulkhead or erect wharves in front of their respective properties, or incorporating ferry, dock and transportation companies, the State of New Jersey gave practically no attention to its proprietorship of the riparian lands until 1851.

[1] For a list of the several legislative grants and concessions prior to 1864, see Report of Riparian Commissioners to the Legislature, dated February 1, 1865.

Early General Laws Relating to Improvement of Navigable Waterways

Wharf Act[1]

In 1851 the so-called WHARF ACT was passed by the Legislature of New Jersey, under which the Boards of Chosen Freeholders of the several counties were authorized to issue licenses for improvements along the tide waters located within their respective borders. The act set forth that any owner of lands situated on tide water could apply to, and obtain from these Boards permission to build docks, wharves or other structures in front of his lands and extending beyond the limits of ordinary low water, provided such improvements did not encroach upon or interfere with navigation thereon. Provision was made for advertising the application for a period of six weeks in a newspaper published in the county, or, where no paper was published in the county, then in one published in an adjacent county. Furthermore, a notice of the application, giving the location as well as the dimensions of the docks, or wharves, intended to be built, was to be posted in five of the most prominent places in the neighborhood of the lands in question. The Freeholders, when satisfied that all of the provisions of the act had been complied with and that the improvement was not a menace to navigation, or a detriment to adjacent property, could issue a license in accordance with the application.

[1] Public Laws of 1851, p. 335.

The license was to be recorded in the minute book of the Board of Chosen Freeholders, as well as recorded in the office of the County Clerk.

By the act all docks, wharves or other improvements must be completed within five years from the date of issue of the license. They were not assignable, except with, and as pertaining to, the land in front of which they were constructed and passed by the sale of any such lands as appurtenant to the same. There was no compensation to the State under this act for the lands under water so occupied.

Under the WHARF ACT it was decided by the New Jersey Court of Errors and Appeals in the case of Brown v. The State (Morris Canal and Banking Co., prosecutors), (1858):[1]

> (1) That the Board of Chosen Freeholders have no power to examine into and decide upon the applicant's title to the lands above and adjoining the edge of the water at ordinary high water.
>
> (2) If proof is made and filed with their clerk that the notice required by the Act was given in accordance with the law, the only question they can examine and decide is, whether the dock, wharf or pier applied for will interfere injuriously with the public rights of navigation.

This act continued in force until 1869, when it was repealed, so far as it applied to the Hudson River, New York Bay and a portion of the Kill van Kull.[2] It was

[1] 3 Dutcher, p. 648. (This is a reversal of the Supreme Court, 3 Dutcher, p. 13.)

[2] Laws of New Jersey of 1869, p. 1017.

repealed so far as applying to other sections of the State by the Act of March 20, 1891.[1]

To all attempts which were made to continue work in the New York Bay section after 1869 under Freeholders' licenses that had expired, objection was made by the State. Numerous suits were brought to enforce the State's riparian claims and in each a verdict in favor of the State obtained.

The repealing act of 1891 contained a provision that the Boards of Freeholders in the counties named in the act could continue to exercise their authority under the act of 1851 until the first day of the July following (1891), and that any improvements authorized under such licenses must be completed before January 1, 1892. Naturally there was a considerable scramble to secure the necessary permission and many licenses were issued under this provision. Various expedients were adopted in attempts to comply with this provision of the "repealer," or with the provisions of the original WHARF ACT. So numerous and palpable were some of these attempts at evasion of the actual spirit of the law, even though they might comply with the letter thereof, that the State brought suit to annul many of the Freeholders' licenses.[2]

While there was no question as to the right of the holders of Freeholders' licenses to the use and occupancy of the wharf or dock erected under its provisions, the title to the lands below high-water mark, upon which such

[1] Laws of New Jersey of 1891, p. 216.

[2] See The State (Stockton, Attorney-General), vs. The American Lucol Co., 36 Atlanta Rep., p. 572.

improvements were erected, still remained in the State and was not, nor could it legally be included in any licenses granted under the WHARF ACT. The New Jersey Constitution provides in Section VIII that:

> "All grants and concessions shall be in the name and by authority of the State of New Jersey sealed with the great seal, signed by the governor, or person administering the government, and countersigned by the secretary of state." * * *

It will be noted that from this constitutional provision, taken in connection with the various decisions of the courts, already recited, that the ownership of lands between high-water and low-water marks is in the State, it was clear that the several Boards of Chosen Freeholders had no legal or constitutional right to convey these lands in fee simple to the abutting shore front owners.

The general policy of those who had taken advantage of the WHARF ACT, therefore, has been to seek a grant, or lease, from the State (through the Riparian Commismission, for which see below,) for the lands below the high-water mark and thus be in a position to give a clear and perfectly valid title to the property in question. The evil effects of the legislation of 1851 have as a consequence been largely corrected and the State has come again into "possession of its own."

Riparian Commission

By resolution of the New Jersey Legislature, adopted February 23, 1848, three commissioners were appointed to inquire into and report to the next session of the Leg-

islature the extent and value of the lands owned by the State in the Bay of New York, Harsimus Bay and the Hudson River, within the county of Hudson, and such other matters in relation to the rights of the State and the citizens therein as they shall deem expedient. This was the beginning of the present system of riparian grants and leases.

The Commission reported substantially as follows regarding lands submerged by navigable or tide waters from the margin to the channel:

(1) That any grant of such lands is a governmental function and involves the exercise of a power partaking the nature and character of sovereignty.

(2) That while the riparian owner might possess the right to *wharf out* to low-water mark (alleged to rest in usage or custom), in a large number of cases these owners sought specific legislative action to assure their rights.

(3) That all such lands and title thereto are in the State.

(4) That the Legislature may dispose of and regulate the lands beyond high-water mark for the advancement of commerce, or the improvement of fisheries; they may pass laws directly granting title, or authorize a commission to dispose of the same.

(5) That since 1702 the Board, or Council, of Proprietors could not convey any submerged lands, they having no right or title in navigable rivers, nor in the soil under them.

(6) That riparian use becomes absolute and indefeasible only by the exercise, actual or presumed, of the State sovereignty.

(7) That the early legislation of the State is replete with instances of recognitions and enforcement of the common rights of navigation and fishery, extending to creeks navigable by shallops, or in any way used for the transportation of produce.

(8) That the right of ferry was not considered inseparably annexed or appurtenant to land, was frequently severed and made personal, and promoted by exclusive privileges, equivalent to a prohibition of the use and enjoyment of such right by the riparian owner.

The Commissioners present no definite recommendations other than the repeal of several acts, under which no work has been done within the time limits therein specified, and the fixing by permanent monuments of the boundary line in New York Bay between New York and New Jersey. They answer most of the questions involved by suggesting three, or four, plans and then leaving it to the Legislature to decide upon the one best suited.

In 1864[1] the New Jersey Legislature authorized the appointment of a Commission "to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State." The purpose of this act was partially inquisitional and partially to form a definite policy to be pursued in regard to this asset of the State, including the establishment of exterior bulkhead lines.

In the report which this Commission submitted to the Legislature in 1865, the following recommendations and suggestions were made:

[1] Laws of New Jersey, 1864, p. 681.

(a) That exterior lines for solid filling in the waters of New York Bay and the Delaware River, on the maps accompanying the report, be adopted by the Legislature.

(b) That the policy concerning the lands between high and low-water marks be continued, leaving it lawful for the owner of lands situated "along or upon tide waters to build docks or wharves upon the shore in front of his lands and in any other way to improve the same, and when so built upon to appropriate the same to his own use."

(c) That no absolute grant be made of the State's title in such shore unimproved, except to the owner of the adjacent upland, and that such grants, if made, be without compensation, but under such other conditions as the interests of navigation shall seem to require.

(d) That during the next succeeding five years no grant of land under the tide water below low-water mark, shall be made to any other than the riparian owner, in front of whose shore line such lands below water lie, and that such grants do not extend beyond the exterior line as fixed by this Commission and only under such conditions and restrictions in each instance as the Legislature may choose to impose for the improvement of navigation and commerce.

(e) That where grants are made, as suggested in "d", the grantee pay as a consideration for the grant, one-fourth of the appraised marketable value of the lands, the remaining three-fourths to be retained by the grantee as an inducement for making the improvement.

(f) That so much of the WHARF ACT as relates to the granting of licenses for improvement below low-water be repealed.

(g) That a board or commission be created with discretion and power to investigate applications for lands under tide water, determine the value thereof and arrange the conditions to apply to all riparian grants.

No definite action was taken on the report of the Commission appointed in 1864 until 1869, in which year the Legislature passed

"A supplement to an act, entitled 'an act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the bay of New York, and elsewhere in this State, approved April eleventh, one thousand eight hundred and sixty-four.' "

This supplemental act was approved March 31, 1869.[1]

This act approved the exterior pierhead and bulkhead lines as proposed by the Commission of 1864, with one modificatlon, as noted on page 170.

It further provided for the appointment of four Commissioners, who were authorized to complete the work of the previous Commission. The act also gives the Commissioners the power to execute leases in perpetuity to those holding legislative grants, as well as to grant, or lease, lands under tide waters.

Since that time there have been passed by the Legislature numerous supplemental acts which either pertain to the administrative features, grant additional powers or define the duties and powers previously authorized.

Under the New Jersey Statutes the right of the owner of land on tide water to the tide lands is this: When

[1] Laws of New Jersey, 1869, p. 1017.

such lands are to be sold the Riparian Commissioners are directed to appraise them and, by way of preference, they are then to be offered to the riparian proprietors at the price thus fixed. He has no present right in the property. His privilege is defeasible at all times by the act and will of the State.

As regards the rights and privileges of those purchasing from the State of New Jersey title to the land below high-water mark the following statement of the Riparian Commission is an apt summary of the situation as determined by the several court decisions thereon:[1]

> "He (the riparian grantee) secures the same rights, as far as he actually reclaims or improves it, as the purchaser of any piece of upland really secures. That is to say, as far as he fills in or docks his purchase. The courts have decided that until they are so reclaimed the tidal waters of the State are open to common use for fishing and navigation. With this provision the riparian grant belongs to the grantee, within the metes and bounds of his purchase, as absolutely as his field, his garden, or his city lot, and he may convey it by sale to another person just as he may convey upland property. The only easement the general public can exercise is to fish or sail or row in the waters covering his riparian purchase until it is reclaimed for such public use by bulkheads or wharves. It is in this respect closely analogous with public use for hunting and other purposes, of unfenced upland commons. The exercise of such a public easement cannot interfere with the rights of the owner to use his land under water in any way that he sees fit.[2] It cannot be so em-

[1] Annual Report Riparian Commission, 1899, pp. 6-7.

[2] Subject to such restrictions as the Legislature may place upon waters on navigable waterways in the exercise of its police powers.

ployed as to deprive him of any right of ownership and use.[1] The absolute character of the grant made by the State follows as a corollary of the State's absolute ownership of those lands under water. There is a vague idea, cherished with singular persistency in some minds, of some shadow of partial ownership in these riparian lands by the owner of the abutting upland. The idea has its root in conveniency of access of such owners to the waters covering these lands. But that adjacency is its only foundation. It gives him no more right to the State's riparian property on one side of his land that it does to the farm or other realty of his neighbor on the other side."

"Conveniency of access to property conveys no title. The lands under the tide waters of the State belong to the whole people of New Jersey. The farmer in Warren county has as much right and interest in them as the oysterman of Cumberland or Ocean. That common ownership finds its equitable adjustment and distribution in the use of the public school fund, derived from the sale or lease of these riparian lands."

"The only advantage aside from adjacency that the abutting owner has over other residents of the State, in riparian lands fronting on his property, is the six months' option that he is entitled to under the law for their purchase or lease."

In the earlier deeds of the Riparian Commission the grant reads to the exterior line, as now, or hereafter, established; or, in other words, is a flexible one. In many instances exterior lines have been established by the State authority in places where the War Department has

[1] Under the United States Constitution the federal authorities may take the same without compensation, for the improvement of navigation or for structures in aid of navigation. (See p. 113.)

not established any harbor line. Subsequently, the Federal authorities have fixed harbor lines which may be inside the exterior line as established by the Riparian Commission, in which case the grantee is thereby prohibited from a full development of his purchase. In later riparian grants the exterior lines as established at the time form the boundary of the grant, and if at any future time this exterior line is pushed further into the stream it becomes necessary for the grantee, to hold title to the soil under water between the old and new lines, to purchase this additional right from the State. There is no redress against the State as regards the loss of lands through the Federal Government receding the pierhead line.

Wharf Rights

The question whether a wharf is public or private depends upon the purpose for which it was built, the use to which it has been applied, the place where located and the nature and character of the structure. Where a wharf has been constructed upon private property or upon lands under water, the rights to which have been secure from the State, through lease or grant, it is a private wharf. It cannot be used by the public without the owner's consent and even though the owner shall permit of its use by others, he does not thereby dedicate it to public use or give the right to use without his permission.[1]

On the other hand where wharves, belonging to an individual, are thrown open to the general public they become subject to all the limitations and obligations of

[1] See O'Neil vs. Annett (1859), 3 Dutcher, p. 290.

public usage. Any vessel may moor to such public wharf, without any special permission, subject, however, to wharfage charges. It cannot remain there beyond a reasonable time for the purpose of loading or discharging freight or passengers, without special permission. The wharfage or tonnage charges which shall be made for the use of the facilities of either a private or public wharf must be reasonable and open to all without discrimination.[1]

[1] Cannon vs. New Orleans (1874), 20 Wall, p. 577; Packet Co. vs. St. Louis (1877), 100 U. S., p. 423; Guy vs. Balto., 100 U. S., p. 434; Packet Co. vs. Catlettsburg, 105 U. S., p. 559.

ALLUVION

Natural accretions or "alluvion," as it is called, consists of an increase *per projectionem,* which if slow and secret, and is so gradually and insensibly occasioned as to render it impossible to perceive how much is added in each moment of time, belong to the riparian proprietor to whose land the accession is made; and none but proprietors can have a claim to it. Blackstone says: "As to lands gained from the sea either by alluvion, *i. e.,* by the washing up of sand or earth, so as in time to make *terra firma;* the law is held to be, that if this gain be by little and little, by small and imperceptible degrees—it shall go to the owners of the lands adjoining, for *de minimis non curat lex;* but if the alluvion be sudden and considerable, the land shall go to the King as lord of the sea.[1]

The dicta stated in Camden and Atlantic Land Company v. Lippincott (1883),[2] was that in grants of lands lying along the sea coast, the parties act with knowledge of the variety of changes to which all parts of the shore are subject. The grantee, by such boundary, takes a freehold that shifts with the changes that take place, and is obliged to accept the situation of his boundary by the gradual changes to which the shore is subject. He is subject to losses by the same causes that may add to his boundary; and as he is without remedy for his loss, so is he entitled to the gains which may arise from the alluvial formations, and he will, in such case, hold by the same boundary, including the accumulated soil.

[1] Angell on Tide Waters (2d Ed.), pp. 249-251.
[2] 16 Vroom, p. 405.

In this connection the case of Ocean City Association v. Shriver,[1] (1900) is of particular interest. The facts were substantially as follows:

In 1880 the Ocean City Association, an incorporated land company, or association, purchased a large tract of land in Ocean County. Shortly thereafter the association made and filed a map on which lots and streets were laid out, and in 1883 they caused a more extensive map to be made, and filed a copy in the County Clerk's office. On this map Ocean avenue was shown parallel with and at some distance from the ocean, and streets were laid out extending from Ocean avenue westerly. The line of high-water was shown on the map as 250 feet east from the easterly line of Ocean avenue. Between the high-water line and Ocean avenue was a space of unplotted land, which had not been laid out into lots for sale. In 1884 they sold one of the plotted lots on the westerly side of Ocean avenue, the particular lot being specified on the map of 1883. By 1895 the ordinary high water had carried away the unplotted land and one-half of the avenue in front of this lot. Subsequently the ocean began to recede, and the high-water line was shown upon the map of the Riparian Commission in Ocean avenue. The defendant in error obtained in 1897 a riparian grant of a strip of land in front of his lot and extending to the exterior line as established by the Commission.

The Ocean City Association, on contesting this grant, obtained decision in the Court of Errors and Appeals in their favor. It was held by the court in an opinion by Mr. Chief Justice Depue, as follows:

[1] 35 Vroom, p. 550.

1. That to entitle a proprietor to the right of accretion, he must be a riparian owner, and his land must adjoin the ordinary high tide. If a strip of land, however small, intervenes between the premises and the water at ordinary high tide, its owner will not be entitled to the accretion.

2. The right of alluvion depends upon the facts of the contiguity of the estate to the water, and to give a right to accession and accretion, there must be an estate to which the accession can attach.

3. The doctrine whereby title is acquired by accretion is founded on the principle of compensation. The proprietor of lands having a boundary on the sea is obliged to accept the alteration of his boundary by the changes to which the shore is subject. He is subject to the loss by the same means that may add to his territory; and, as he is without remedy for his loss, so he is entitled to the gain which may arise from alluvial deposit.

4. The defendant's grant by the Riparian Commissioners was made pursuant to the act of 1871. That act empowers the Riparian Commissioners to make grants of the land under water to riparian owners only, and a grant by the Commissioners under that act to any one else would be *ultra vires*. The case, therefore, between these parties turns wholly on the condition of the line of ordinary high tide in 1884. If the original purchaser of this lot did not thereby become a riparian owner, then a subsequent transfer of the property could not invest the purchaser with such title or estate in the accretion caused by the changes on the shore, and the grant of the riparian commissioners, in 1897, was a nullity.

It is generally conceded that the riparian title attaches to subsequent accretions to the land, effected by the gradual and imperceptible operation of natural causes. By the common law sudden accretions to the land on navigable waters, produced by annual floods, or by artificial means from the bed of the river, belong to the Crown; but as the only waters recognized in England as navigable are tide-waters, it has been contended that the above law is applicable to tide-waters only. Owing to the different conditions existing in England and America regarding what shall constitute a navigable stream, it is now accepted that the rule applies to all navigable waterways, whether affected by tidal influences or not.

In the case of submerged lands, where accretions extend from the shore into the river, they belong to the owner of the upland, but if the accretions form in the river and extend towards, but do not adjoin the shore, the title is in the State, or its grantee, or lessee.[1] In the case of unnavigable fresh water streams, all islands formed in the bed of the waterway become the property of the riparian proprietors. When an island so formed lies partly on one side of the thread of the stream and partly on the other, the land is divided between the several riparian proprietors according to the respective length of their lands along the original thread, or medium line between the banks of the stream in its natural stage. When the island is formed by a sudden change in the course of the river, or by the violent action of the sea, as by encircling a field or cutting off a point of land or peninsula, it remains the property of the former owner.

[1] Linthicum vs. Cohn, 64 Md., p. 439; 53 Am. Rep., p. 219; S. P. Posey vs. James, 7 Lea, (Tenn.), p. 98.

Federal Authority Over Navigable Waters

Having traced the origin of title to, and general supervision over, the soil along and in the navigable waterways in the State of New Jersey, the next question is as to the rights of those purchasing, or leasing, these lands from the State as against the paramount right of the Federal government.

According to Article I, Section VIII, clause 3, of the United States Constitution, Congress shall have power "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes." This is the so-called "Commerce Clause" and has been given the most liberal construction by the courts. The authority of Congress under these powers extends under a strict construction of the Constitution to such streams, or waterways, as are navigable, and the first question, therefore, is to determine exactly what constitutes a navigable waterway.

Test of Navigability

Congress has from time to time declared certain streams navigable and has also withdrawn other streams wholly, or in part, from the navigable list. When such water courses are specifically declared non-navigable they come under the exclusive jurisdiction of the State in which they lie, or through which they flow. The best statement as to whether a stream is navigable or not navigable is that by Mr. Justice Field, in the case of The Daniel Ball, (1870).[1]

[1] 10 Wall, p. 563.

"The doctrine of the common law as to the navigability of waters has no application to this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all of the navigability of waters. There no waters are navigable in fact, or, at least, to any considerable extent, which are not subject to the tide, and from this circumstance tide water and navigable water there signify substantially the same thing. But in this country the case is widely different. Some of our rivers are as navigable for as many hundred miles above as they are below the limits of tide water, and some of them are navigable for great distances by large vessels, which are not even affected by the tide at any point during their entire length. A different test must, therefore, be applied to determine the navigability of our rivers, and that is found in their navigable capacity. These waters must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

The court has also decided that if a stream is capable of floating logs or timbers to market such constituted commerce, within the meaning of the Constitution, and, therefore, such stream was navigable in fact.[1] Furthermore, in U. S. v. The Montello, the United States Supreme Court decided that it was not necessary for a stream to be navigable through its entire length to come under the classification of a navigable waterway. It

[1] Herman vs. Beef Slough Mfg. Co. (1878), 8 Bissell (U. S.), p. 334; 1 Fed. Rep., p. 145.

might contain obstructions such as "rapids" or "falls" and yet if it carried interstate commerce on any portion of it, it was "navigable in fact," so far as pertained to those parts over which the public can pass and repass.[1]

A river is, therefore, a navigable water of the United States when it forms by itself, or by its connection with other waters, a continued highway over which commerce is, or may be, carried on with other States or foreign countries in the customary modes in which commerce is conducted by water. If a river, lake, or pond, either in itself or by connection with other waters, does not form a highway for interstate or foreign commerce, but is navigable between different places within the State, it is not navigable water of the United States, but only a navigable water of the State. For instance, Green Pond, in Morris county, is navigable, but it does not in connection with any other body of water form a navigable waterway for interstate traffic, and is, therefore, wholly a navigable water of the State of New Jersey. Any improvements thereon would be entirely and exclusively within the jurisdiction of the State of New Jersey. On the other hand, the Morris Canal, in Hudson county, is a navigable waterway of the United States and subject to all the federal rules and regulations.

While there was no question as to the powers of Congress to exercise control over the navigable portions of waterways, yet the right of the Federal government to supervision of the parts of such streams as are beyond the limits of navigation was, until about 1890, doubted in many quarters. By an act of Congress in 1890,[2] it was

[1] U. S. vs. The Montello (1874), 20 Wall, 434.
[2] 26 U. S. Statutes, p. 454.

declared "That the creation of any obstruction not affirmatively authorized by law to the *navigable capacity* of *any waters,* in respect to which the United States has jurisdiction, is hereby prohibited." This immediately brought the entire question of Federal authority before the United States Supreme Court in the case of U. S. v. Rio Grande Dam & Irrigation Co. (1899),[1] and in the opinion of the court, delivered by Mr. Justice Brewer, it was declared:

> "It is not a prohibition of any obstruction to the navigation, but any obstruction to the navigable capacity, and anything wherever done or however done, within the limits of the jurisdiction of the United States, which tends to destroy the navigable capacity of one of the navigable waters of the United States, is within the terms of the prohibition. * * * And it would be to improperly ignore the scope of the language to limit it to the acts done within the very limits of navigation of a navigable stream."

Since the announcement of this decision, the authority of the United States over every portion of a stream which is navigable in part, or over any of its tributaries, has been generally admitted, where such stream either in itself, or by connection with other water courses forms a highway for interstate commerce.

The authority of Congress as ceded by the several States to the United States by the Federal Constitution consisted of certain powers of jurisdiction and control, "but property itself was not granted to the general government." We have examined the rights of the Federal

[1] 174 U. S., pp. 690-699.

authorities to supervise constructive works or improvements of navigable waterways, but the title to land under water which may be required for carrying out these provisions still remains in the sovereign state, or its grantee, the judicial interpretation being that the United States was given by the Constitution an easement in such lands only in so far as it might be required to carry out the constitutional provisions.

Congress under the power to regulate commerce may assume, as it has already assumed, the power to regulate navigation over navigable waters within the States as to prohibit its obstruction and to cause the removal of obstructions thereto, and such power when exercised is "conclusive of any right to the contrary, asserted under the State authority."

In the case of Gilman v. Philadelphia,[1] the court said, respecting the control of navigable waters for commerce:

> "For these purposes they (the soil under the water) are the public property of the United States and subject to all the requisite legislation of congress."

Again in the case of Pollard's Lessee v. Hagan,[2] the court said:

> "The right of eminent domain over the shores and the soil under navigable waters for all municipal purposes belongs exclusively to the States within their respective territorial jurisdiction. * * * But in the hands of the States this power can never be used so as to affect the exercise of any national right of

[1] 3 Wall pp. 713-725.
[2] 3 Howard, p. 230.

> eminent domain or jurisdiction with which the United States has been invested by the Constitution."

The "Tuckerton Creek, (N. J.), oyster bed controversy" aptly shows the paramount authority assumed by the Federal Government over the beds of navigable waterways. By an act of Congress of March 2, 1907, provision was made for dredging a channel at the mouth of Tuckerton Creek, which meant the destruction of several oyster beds located within the field of operation. Title to these submerged lands was held through lease from the State Oyster Commission for the district of Ocean county, and the question arose as to the necessity of extinguishing the leasehold interests of the lessees.

In an opinion by the Judge Advocate General of the United State Army, it was held that the Federal Government had the right to take these lands, *without compensation,* for the improvement of the waterway to make it subserve the purposes of commerce. On the other hand, the Attorney-General of New Jersey advised that:

> "Such an act on the Government's part would be a taking of private property without compensation first paid, and therefore in violation of the Constitution, both of the United States and of the State of New Jersey."

Which opinion was correct in the case was never judicially determined, because certain parties, interested in securing the deepened channel, bought up the leases and donated them to the State, which thereupon withdrew its objection to the proposed work.

In exercising this power the United States can not divest rights of title or occupation in a State or individuals, but these rights are left to be enjoyed as before, subject, however, to the paramount public right of freeing navigation from obstruction possessed and exercised by the United States through Congress. In the execution of the laws relating to obstructions to navigation the Secretary of War has no general authority, but only such as may have been vested in him by legislation of Congress.

As between the United States and a State, the soil of the bed of navigable waters and of the shores of tide waters below high-water mark, or—on rivers not reached by the tide—the soil of the shores below the ordinary water line (as not affected by freshet or unusual drought) belongs to the State.

The courts have held that while the title to submerged lands, under a navigable water of the United States and within the limits of a State, belongs to the State and may by it be granted to individuals, such grants are, however, subject to the right of the United States to take the same without compensation for the improvement of navigation or for structures in aid of navigation.[1]

Congress has very wisely provided that no Federal appropriations for river and harbor improvement work shall be used for dredging inside of established harbor lines (Act, July 13, 1892). This, of course, will not apply to Federal appropriations which specifically provide

[1] Wisconsin vs. Duluth, 96 U. S., p. 379; U. S. vs. City of Moline, 82 Fed. Rep., p. 592; Leovy vs. U. S., 92 Fed. Rep., p. 344; U. S. vs. Chandler-Dunbar Co., 229 U. S., p. 53.

for improvements on or adjacent to Federal reservations, or where necessary to carry on the business of the United States Government.

As showing the far reaching effect of the authority of the United States over waterways, the cases of the Erie and Atlantic Basins in New York Harbor are interesting. These basins are private property, but they are also on navigable waters of the United States and the owners of the soil under the water hold the title subject to the right of the public to navigate such waters and are, therefore, not empowered to fill the basins and deprive the public of their use.

In the interest of navigation, and for the protection of the waterways of the country, Congress has passed comprehensive laws relating to the placing of structures of various kinds therein. Section 10 of the Federal Act of March 3, 1899, makes it unlawful to construct any wharf, pier, etc., in any navigable water of the United States outside established harbor lines, or where no harbor lines have been established, except on plans approved by the Chief of Engineers and authorized by the Secretary of War. A permit under this statute confers upon the grantee no right, or franchise, for the structure, or interest in the shore or bed of the stream where it is to be built, but simply makes the authority required therein a condition precedent to the exercise of such right as an applicant may have with respect to its effect upon commerce and navigation.[1] It does not relieve the grantee of complying with any State or local law or regulation.

[1] Cummings vs. Chicago, 188 U. S., p. 410.

The Federal authorities do not claim, nor exercise, any control or supervision of what may be called the police powers of the State. For instance, the War Department will not withhold its approval because the structure would violate the local health regulations, or prove detrimental to private property. The only interest of the Federal Government in such matters is the effect the structure will have upon navigation, leaving the questions coming properly under the police powers to the jurisdiction of the State or municipality.

Under the several acts of Congress jurisdiction over the authorization and construction of bridges over navigable waters entirely within the State rests with the State, *subject* to the approval by the Chief of Engineers and Secretary of War as to the location and plans therefor. Such approval of location is merely to determine as to whether the structure would be an unreasonable obstruction to navigation. In the case of interstate streams all bridges must first be specifically authorized by Congress. The War Department is directed to supervise their construction to the extent of seeing that the various provisions of the law under which the structure was authorized are carried out, both as to location, width of span, and time limit within which it must be completed. As to the last condition no authority is given the Secretary of War to grant an extension, this resting entirely with Congress.

Under Act of March 3, 1899, the Secretary of War is given authority, where any bridge constructed over any navigable waterway of the United States is an unreasonable obstruction to the free navigation of such water on

account of insufficient height, width of span or otherwise, or where there is difficulty in passing the draw opening, or draw span, of such bridge by rafts, steamboats, or other water crafts, to cause the same to be made reasonably free to navigation. This applies to all bridges, whether constructed before the War Department assumed jurisdiction over their construction or constructed under Federal sanction. It shall be the duty of the Secretary, after due notice and a public hearing, "to specify the changes recommended by the Chief of Engineers that are required to be made" so as to obviate the difficulty. The power of Congress to regulate bridges over navigable waters is paramount, and where it comes into conflict with that of a State, the latter necessarily becomes ineffective.

Much confusion has arisen as regards the scope and extent of the Federal jurisdiction over repairs to bridges crossing navigable streams which lie wholly within a single State. Where such repairs will seriously impair navigation, or constitute a decided modification or rebuilding of an existing bridge originally built under a Federal permit, or even prior to the United States assuming control over this feature of navigable waterways, the approval of the War Department must be had. It is held that such a modification or reconstruction practically means a new structure and, as such, would come within the scope of section 9 of the Act of Congress of March 3, 1899. If, on the other hand, the repair work consists in making only ordinary repairs, without in any way modifying the general construction and such repair work can be done without interference to navigation, no Federal permit is required. On streams lying wholly with-

in the State, however, the Legislature may require that such alterations shall have the sanction or approval of the State's properly constituted officials to be a legal act.

Federal Harbor Lines

Under Act, March 31, 1899, the Secretary of War is authorized, whenever essential to the preservation and protection of harbors to establish harbor lines, beyond which no structures shall be built, or deposits made, except under such regulations as he shall prescribe. These lines may be established in parts of a harbor not at the time navigable, upon the assumption that the authority of the United States extends to all parts of such harbor. Furthermore, the fact that harbor lines have been established does not prevent such lines being subsequently extended further into the stream or drawn back, that is, within the position previously adopted, if the interests of navigation so require.

The authority of the United States in even the non-navigable portions of waterways and harbors is aptly illustrated in the case of Jamaica and Sheepshead Bays, where in 1911 the Federal Government established harbor lines below high-water mark at points where the same were not navigable. It was held by the Judge Advocate of the United States Army, that since the general government could improve all or any part of the waterways by dredging or other works, its authority could not be limited to the navigable portions, but extended to every part thereof. In order to preserve and protect such waterways for the development of future channels, or in the interests of navigation, the United States claims the

right to establish such harbor lines, below high-water mark, as its engineers after due investigation deem justifiable, and any title of the State, or its grantee, to submerged lands was subordinate to the easement of the United States to take such lands without compensation to the owners.[1]

In the case of Philadelphia Co. v. Stimson,[2] where harbor lines had been established in the Ohio River at Brunot's Island in 1895, and no improvements having been made by the riparian owners in conformity therewith, it was decided in 1907 to move the line previously established back to the high-water mark, the Court held that such change was within the authority of the Secretary of War, and "that that officer did not exhaust his authority in laying the lines first established in 1895, but was entitled to change them, as he did change them in 1907, in order to more fully preserve the river from obstruction." The Court said that the title to the soil under navigable waters was "subject to the authority of Congress under the Constitution of the United States;" and that "the extension of this power could not be fettered by any grant made by the State of the soil which formed the bed of the river, or by any authority conferred by the State for the creation of obstruction of its navigation."

While the United States can pass laws prohibiting the erection of any structures on navigable waterways beyond certain prescribed limits, this does not mean that the harbor lines which may be established under State au-

[1] See Digest of Opinion of Judge Advocate General U. S. A., p. 777, and Philadelphia Co. vs. Stimson, 223 United States, p. 605.

[2] 223 United States, p. 605.

thority are nullified, except where such State lines are "outshore" of those fixed by Federal authority. In New Jersey, the Riparian Commission has established in many localities "exterior lines for solid filling," and has sold or leased certain lands beyond the line of high-water. In some cases the lines established by the War Department are inside of such State lines, in which cases the purchaser loses the full use of his purchase or lease, but he has no redress. In New Jersey the right to build under a Federal permit can not extend beyond the line established by the Riparian Commission,[1] since title to all the soil under water beyond the latter line is in the State and any structure erected beyond the metes and bounds of the riparian grant is a purpresture and a public nuisance. Furthermore, all developments, or improvements, of every kind and description must have the approval of the New Jersey Harbor Commission.[1] Except in the New York Harbor, no Federal permit is required to build any wharf, pier or bulkhead within United States harbor lines where such have been established, but this must not be construed as waiving the necessity of obtaining proper State and local permission.

In later years it has been the policy of the Riparian Commissioners of New Jersey, where the Federal harbor lines have been established outside of those fixed by the State, to promptly make the State lines correspond with the former.

[1] Now (1915) the Department of Commerce and Navigation.

CANALS IN NEW JERSEY

During the latter part of the eighteenth and early years of the nineteenth century, the demand for better transportation facilities became so urgent that there sprung up all over the United States an active and energetic agitation for improved waterways and canal building. The strongest sentiment was aroused in New York State and numerous petitions were circulated demanding that the various inland lakes and rivers be connected with the ocean. This agitation finally culminated in the building of the Erie Canal, connecting Buffalo with the Hudson river. It must be remembered that in the early days the chief settlements were along waterways, which in some cases had direct connection with the ocean, while in other cases there was no navigable connection with the sea ports.

In a memorial, dated 1816, addressed to the Legislature of New York, advocating a canal "between the great western lakes and the tide waters of the Hudson," the value of internal water communication is so aptly stated that the following extract is deemed worthy of notice:

> "The improvement of the means of intercourse between different parts of the same country, has always been considered the first duty and the most noble employment of government. If it be important that the inhabitants of the same country should be bound together by a community of interests, and a reciprocation of benefits; that agriculture should find a sale for its productions; manufactures a vent for their fab-

rics; and commerce a market for its commodities; it is your incumbent duty to open, facilitate, and improve internal navigation. The pre-eminent advantages of canals have been established by the unerring test of experience. They unite cheapness, celerity, certainty and safety, in the transportation of commodities. It is calculated that the expense of transporting on a canal amounts to one cent a ton per mile, or one dollar a ton for one hundred miles; while the usual cost by land conveyance is one dollar and sixty cents per hundred weight, or thirty-two dollars a ton for the same distance. The celerity and certainty of this mode of transportation are evident. A loaded boat can be towed by one or two horses at the rate of thirty miles a day. Hence, the seller or buyer can calculate with sufficient precision on his sales or purchases, the period of their arrival, the amount of their avails, and the extent of their value. A vessel on a canal is independent of winds, tides, and currents, and is not exposed to the delays attending conveyances by land; and with regard to safety, there can be no competition. The injuries to which commodities are exposed when transported by land, and the dangers to which they are liable when conveyed by natural waters, are rarely experienced on canals. In the latter way, comparatively speaking, no waste is incurred, no risk is encountered, and no insurance is required. Hence, it follows that canals operate upon the general interests of society, in the same way that machines for saving labour do in manufactures; they enable the farmer, the mechanic, and the merchant, to convey their commodities to market, and to receive a return at least thirty times cheaper than by roads. As to all the purposes of beneficial communication, they diminish the distance be-

tween places, and therefore encourage the cultivation of the most extensive and remote parts of the country. They create new sources of internal trade, and augment the old channels, for the more cheap the transportation, the more extended will be its operation, and the greater the mass of the products of the country for sale the greater will be the commercial exchange of returning merchandise, and the greater the encouragement to manufacturers, by the increased economy and comfort of living, together with the cheapness and abundance of raw materials; and Canals are consequently advantageous to towns and villages, by destroying the monopoly of the adjacent country, and advantageous to the whole country; for though some rival commodities may be introduced into the old markets, yet many new markets will be opened by increasing population, enlarging old and erecting new towns, augmenting individual and aggregate wealth, and extending foreign commerce.

"The prosperity of ancient Egypt, and China, may in a great degree be attributed to their inland navigation. With little foreign commerce, the former of those countries, by these means attained, and the latter possesses, a population and opulence in proportion to their extent unequalled in any other. And England and Holland, the most commercial nations of modern times, deprived of their canals, would lose the most prolific sources of their prosperity and greatness. Inland navigation is, in fact, to the same community what exterior navigation is to the great family of mankind. As the ocean connects the nations of the earth, by the ties of commerce, and the benefits of communication, so do lakes, rivers, and canals operate upon the inhabitants of the same coun-

> try; and it has been well observed, that 'were we to make the supposition of two states, the one having all its cities, towns and villages upon navigable rivers and canals, and having an easy communication with each other; the other possessing the common conveyance of land carriage, and supposing both states to be equal as to soil, climate and industry; commodities and manufactures in the former state might be furnished thirty per cent. cheaper than in the latter; or in other words, the first state would be a third richer, and more affluent than the other.' "

The earliest canal legislation in New Jersey was in 1800, when the Governor was empowered to incorporate a company to shorten the navigation of Salem Creek. This was followed by acts granting charters to canal companies in Cumberland County and several to cut canals across Manasquan Beach and to connect Barnegat Bay with the ocean or with Manasquan River. These were mostly local projects, and may be passed over without further comment, as they have only an indirect bearing on transportation questions as related to State, or interstate, commerce. The first waterway development of a national character was the proposition to connect the two largest cities of the country—New York and Philadelphia—by a canal, and the opening up of transportation facilities to bring the coal fields of Pennsylvania into communication with New York and the New England States; the former was finally consummated in the building of the Delaware and Raritan Canal and the latter through the construction of the Morris Canal.

Delaware and Raritan Canal

The agitation for the Delaware and Raritan Canal began about 1804, when the project to connect the Delaware and Raritan Rivers was first earnestly considered. Gordon[1] says it was "a favourite project—with speculators desirous to deal in a marketable commodity; with capitalists seeking for safe and profitable investments; and with many statesmen of New Jersey, who believed they saw, in it, the means of creating a permanent and large revenue for the State, which would forever relieve her citizens from taxation, for the ordinary support of government."

The Legislature chartered the New Jersey Navigation Company in 1804, which proposed joining the Delaware River and Raritan Bay by canalizing certain small creeks and rivers and uniting them by a short canal dug in solid ground. The Assanpink Creek and Stoney Brook Creek, together with the Millstone River and Raritan River, were to form the principal portion of the route. The highest intermediate ground between Assanpink and Stoney Brook Creeks was estimated to be fifty feet above tide-water. The only obstacles to be encountered were the "sand hills" west of New Brunswick. Nothing came of this venture, as it was found to be impossible to raise sufficient funds. The agitation continued, and in 1816 Governor Dickerson, in his annual message to the Legislature, said:

> "I must beg leave to call attention to a projected improvement of great national importance. I mean

[1] Gazetteer of the State of New Jersey (1834), pp. 26-27.

the construction of a canal to connect the waters of the Delaware River with those of the Raritan.

"We have the most satisfactory evidence that the expense of constructing such a canal, on the most practicable route, would be but a small proportion of the immense advantage to be derived from it. It would form an important link in that vast chain of internal navigation which our country admits of, and which will, at some future period, afford us security in war and an abundant source of wealth in peace, while it will form a permanent bond of union among the Atlantic States."

As a result of this plea, a State commission, under John Randel, Jr., made an examination and survey of a route for a canal, and again, in 1823, another State commission, headed by Lucius Q. C. Elmer, in conjunction with a Federal Board of Internal Improvements, of which General Bernard was the head, made another survey and report upon the feasibility of a canal route connecting the Delaware and Raritan. The report of the board of United States Engineers will be found in H. R. Doc. No. 482, 55th Congress, 2d session.

In 1824 a private company was authorized to construct the canal, but the state of trade and "inexperience in works of this character prevented its execution." At a later date another joint stock company was organized and paid the State of New Jersey $100,000 for the privilege of building the canal, but, failing to obtain the assent of Pennsylvania to the use of the waters of the Delaware, had to abandon the project, and their premium was returned. Gordon says:[1] "Many citizens of the

[1] Gazetteer of the State of New Jersey (1834), pp. 26-27.

State rejoiced in this failure, by which the power of making the canal reverted to her; anticipating that she would immediately use it. To this end, many petitions were presented to the Legislature at their session of 1828-29; and a committee appointed thereon made an able and elaborate report, accompanied by a bill, authorizing the canal to be constructed by the State."

In the meantime the opposition to any canal assumed a serious attitude, because it was thought that its building would mean the decline in the patronage of the stage lines and various road houses, which for over a quarter of a century had enjoyed a lucrative trade from the travelling public.

The building of a railroad from New York to Philadelphia was also receiving considerable attention in different parts of the State, and it was soon apparent that if any legislation was to be obtained for a canal or railroad, it would be necessary for the partisans of each project to combine their interests and by a united effort obtain what each desired from the Legislature.

Nothing was done with the suggestion of the committee of 1828-29 regarding the building of a canal, but, instead, on February 4, 1830, an act was passed again placing the canal project in the hands of a joint stock company, known as the Delaware and Raritan Canal Company, upon what, at the time, appeared to be very favorable terms to the State, and on the same day an act was passed incorporating the Camden and Amboy Railroad and Transportation Company.

Among the conditions in the canal bill was one requiring the Canal Company to pay to the State, in lieu

of any taxes or imports, a transit duty of eight cents for each passenger and eight cents for each ton of merchandise transported thereon, except coal, lumber, wood and other low priced articles, for which two cents per ton was to be paid. The company was authorized to collect a toll for the transportation of every species of property not to exceed four cents per ton-mile and not more than five cents per mile for the carrying of each passenger on the canal; on the feeder the tolls were to be one-half of those on the main canal. The canal was to be 50 feet wide on the water line and five feet deep, subsequently, by act of February 3, 1831, increased to 75 feet width and seven feet depth with locks 100 feet long and twenty-five feet wide. At the first meeting of the Canal Company, Robert F. Stockton was elected president, John R. Thompson, secretary, and James Nielson, treasurer.

With the commencement of work on this canal began an era of "railroad and canal interference" in New Jersey politics, which was a serious set-back to further waterway development. There was a restriction in the original charter, which provides that no competing canal should be built within five miles of any point of the canal. After the canal and railroad companies had each perfected their organizations, it was found that capitalists were disinclined to subscribe to canal stock, and it was soon decided that a consolidation of the two enterprises would prove advantageous to both. The Legislature, therefore, was urged to permit a combination of the two companies, and in 1831 the famous "Marriage Act" was passed.

By subsequent amendment, upon conveyance of 1,000 shares of the joint stock of the two companies and a guarantee of an annual income of at least $30,000, should the dividends and transit duties not amount to that sum, the State agreed not to charter any competing railroad. This created a monopoly of transportation between Philadelphia and New York which lasted for years. So strong was the influence of the "Camden and Amboy" and the "Delaware and Raritan Canal" party that they controlled legislatures and made or unmade governors at will. The gubernatorial fight in 1836 was entirely between the two factions for and against these corporations. The Pennsylvania Railroad Company in 1871 acquired, by a 999-years lease, the Delaware and Raritan Canal Co. and the Camden and Amboy Railroad and Transportation Co.

The Delaware and Raritan Canal begins at the confluence of Crosswick Creek and the Delaware River, at Bordentown, and extends northeastwardly through Trenton, passing east of Princeton to Bound Brook, where it turns southeastwardly, following the Valley of the Raritan River, to New Brunswick. There is a feeder from Bull's Island on the Delaware River which joins the main canal in Trenton. This feeder is nearly twenty-three miles in length. The topography of the country traversed is easy and there are no important elevations to overcome, the greatest elevation on the main canal being about 56 feet and on the feeder 70 feet.

The distance between the Delaware and Raritan Rivers is 43.457 miles and the length of the feeder 22.727 miles. There are thirteen locks, having a total length of

210 feet each, and width of 23 feet on the main canal and two locks on the feeder. The surface width is now 80 feet with a depth of about 8 feet. The canal was completed in 1838, at an estimated cost of two and one-half million dollars, which has increased to nearly five and one-quarter million dollars through improvements and reconstruction.

The commerce which passed through the Delaware and Raritan Canal in the early days was of considerable volume. The traffic was drawn from the ports on the Delaware River below Trenton, and those on the Chesapeake Bay, through the Delaware and Chesapeake Canal, and also from the Schuylkill and Lehigh Canals in Pennsylvania. The traffic from the Lehigh Canal was formerly locked into the Delaware River and thence into the feeder at Lambertville. There was in the earlier days some traffic from the Hudson River ports, as well as from the Erie Canal and ports on Long Island Sound. In 1866 it amounted to 2,857,232 tons, of which eighty-three per cent. was coal, but since that time there has been a gradual decline until the returns for 1908 showed only 397,258 tons, which, however, increased to 448,964 tons in 1910. The "tons one mile" show a drop from 93,800,450 in 1872 to 8,470,802 in 1910, or a decrease of 90.9 per cent. The reason for this decline has been the cause of much speculation and several investigations. The railroad control and competition has undoubtedly played a large part in the results. The facilities which the railroads have furnished, whereby the heavy commodities may be loaded directly on cars at the point of origin and thence forwarded direct to destination, without any fur-

ther handling, has no doubt made shippers indifferent to the fact that water transportation has been the means of the lowering of rail freight rates to meet water competition. In the report of a Committee of the New Jersey Legislature, made in 1911, the following are given as the means whereby the traffic can be restored to this canal:[1]

1. There should be a reduction in the rates of toll in order that there may be effective competition with the railroads.

2. The present "classification" of commodities for the purpose of making rates therefore should be abolished.

3. The toll-rate must be an established one, so that shippers may rely upon the fact that the rate will be stable and unchangeable and sufficiently certain to insure the investment of capital.

4. There should be regulation of the management of the canal to prevent unnecessary delays and discrimination.

5. The canal should be protected against destructive railroad competition.

6. The Interstate Commerce Commission should be given jurisdiction over the canal, as to interstate traffic.

7. Trade bodies and merchants should unite to use the canal and to provide transportation facilities.

8. Faster motive power should be used.

9. The use of the canal should be stimulated by advertisement that this method of transportation is open to the public.

10. Terminals should be provided so that *all shippers* may be accommodated.

[1] Report of the Committee appointed to investigate the Delaware and Raritan Canal, April 18, 1911.

Morris Canal

The necessity for the Morris Canal was due to the fact that in northern central New Jersey were located, in the early days, a large number of iron forges and furnaces, which had to depend upon wagon transportation to reach the markets with their products and to secure their iron and zinc ores, lime and charcoal. This industry was thus placed at a decided disadvantage in competing with those located on navigable streams. New York was also a fast growing community and the general use of anthracite coal was rapidly increasing, so that the necessity for better transportation facilities for this product from the coal mines of Pennsylvania, as well as of building material from New Jersey, offered a large and immediate source of commerce to the canal. It was estimated that the transportation charges on the Morris Canal for coal would be one or one and one-quarter cents per ton-mile. equivalent to two dollars or two dollars and twenty-four cents per ton, including tolls. The charter allowed a charge of three cents per ton-mile.

The idea of the canal, with inclined planes along substantially the lines afterwards adopted, was the creation of George B. McCulloch, of Morristown, who endeavored to induce the State to adopt it and provide the funds for its building. By an act of the legislature of November 15, 1822, entitled "An Act for ascertaining the most eligible route for and probable expense of forming a Canal to connect the waters of the Passaic River with the waters of the Delaware River," commissioners were appointed to investigate the prac-

ticability, expense and utility of the proposed canal. The report was made in 1823, but, as in the case of the Delaware and Raritan Canal, the State refused to embark in the building of this canal. The enthusiasm created by the Erie Canal agitation, however, soon led to the formation of the Morris Canal and Banking Company, a private corporation of which Cadwallader D. Colden became its first president, and a charter granted by the legislature in 1824 under a special act. At the time there was not a single railroad in the United States, and the Morris Canal was not conceived with the idea of competing with such means of transportation.

The capital stock was placed at one million dollars, which might be subsequently increased to the extent of five hundred thousand dollars, and the act provided that company should have authority to take and hold all lands, waters and streams necessary for the purpose and that canal property *used for navigation* was to be perpetually exempt from taxation. This last provision was in force until 1884, when the State Board of Assessors assessed taxes on the canal under the act of 1884, which assessment the company fought in the courts, but finally in 1890 paid under protest. The charter provides that the canal may be taken by the State at the end of ninety-nine years from the passage of the act, upon payment of a proper valuation to be fixed by commissioners. In case the State did not take the canal at the end of that time, the charter was to be automatically extended for fifty years, after which time it was to lapse and all property of the canal was to become the sole property of the State. The canal was constructed between 1825-31 as far as the Passaic River.

In 1828 authority was given to extend it to the Hudson River and this was completed in 1836. The banking privilege was granted for thirty-one years, but was surrendered in 1849. Various supplemental acts were passed by the legislature between 1824 and 1869. Up to 1841 it was said that there had been expended in and upon the canal about $3,400,000. From the first the canal was too small to accommodate boats of an economical size, the inclined planes did not work out entirely successfully and various other difficulties arose, so that the company became deeply involved in debt and finally, in 1844, was sold out under foreclosure proceedings for one million dollars. Upon reorganization it was capitalized at $2,200,000. In 1914 the total outstanding stock and bonded indebtedness was $2,747,239.50, the new owners having enlarged the canal to some extent with the additional capital and in other ways improved its earning capacity. In 1871, under authority of the legislature, it was leased in perpetuity to the Lehigh Valley Railroad Company, the agreement being that the lessee pay all rentals and necessary expenses of maintenance and operation, the interest on the outstanding indebtedness, four per cent. on the consolidation capital stock and ten per cent. on the preferred stock.

Since the time of the lease, the canal has been allowed to go into decay, as it has apparently been much more profitable to the railroad company to carry the commerce by rail than expend the necessary money to rehabilitate the old canal, even if such a scheme were possible. Today many portions of the canal are practically unnavigable except for the smallest boats.

The route, or right-of-way, of the canal proper extends from the Delaware River at Phillipsburg, through Warren, Sussex, Morris, Passaic, Essex and Hudson counties, entering the Hudson River at Jersey City. The total distance is 102.648 miles, together with two feeders, one of 5.417 miles connecting with the Pompton River and the other of 6.95 miles connecting with Lake Hopatcong. The ascent from Jersey City to the summit level near Lake Hopatcong is accomplished by twelve incline planes and eighteen locks, and the descent to the Delaware River by eleven planes and seven locks. The planes are inclined railways. A cradle descends to the bottom of the canal, so that the boat can be floated into it and secured, then the cradle is hauled by a cable, operated by water power to the level above. The vertical height to which the boats are elevated by the several planes varies from 35 feet to 99.4 feet. The maximum elevation of the canal is 914 feet above sea level. The canal crosses the Passaic River on a stone aqueduct about 45 feet high. Owing to the manner of construction and the location of the canal, which is largely on side hills, there is considerable leakage, as may be seen throughout the length of the canal in the small rivulets running away from the canal. There are several important water powers along the route, which are entitled to take a specified amount of flow from the waters of the canal under agreements made at the time of its building.

As originally built the bottom width of the canal was 20 feet, width on the water line 32 feet and depth of water 4 feet. The locks and planes were 9 feet wide and 75 feet long. In 1835-36 the summit planes were altered

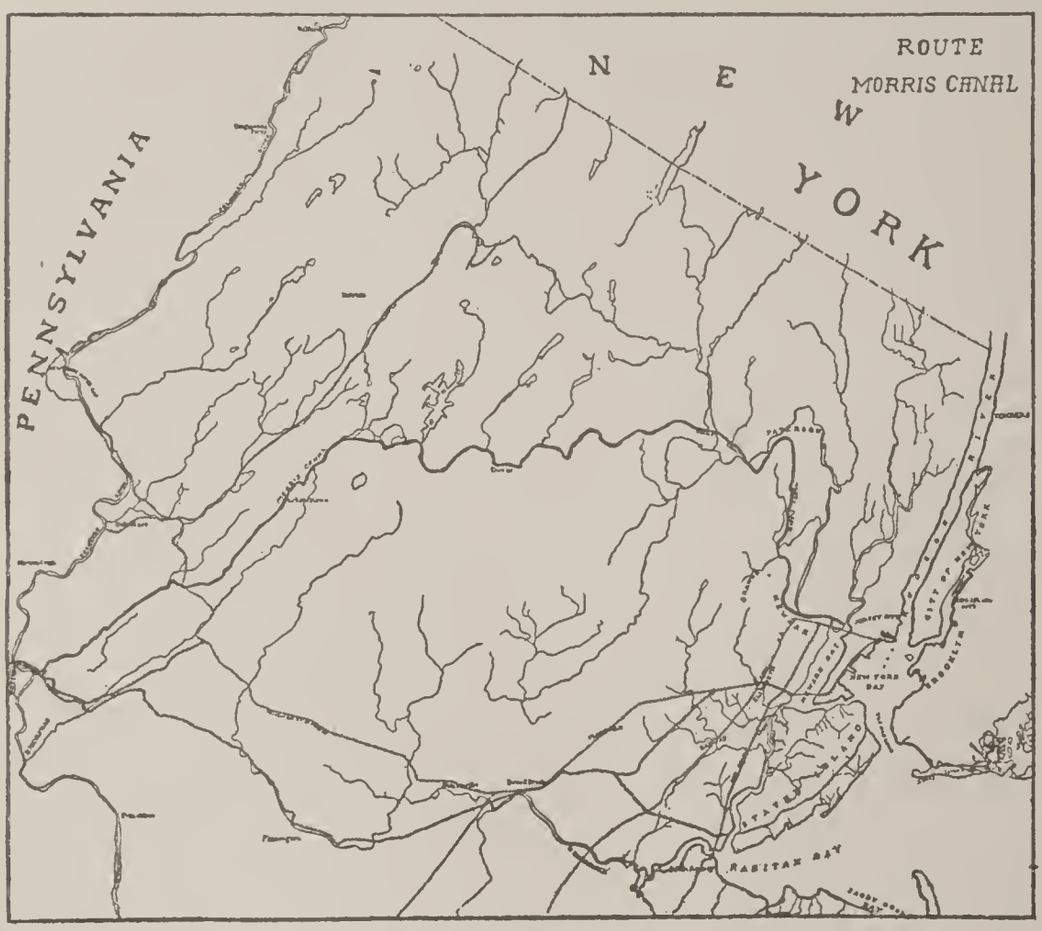
to locks. The planes and locks in 1841 were enlarged to 11 feet width and 95 feet in length. After the reorganization, in 1845, the canal was enlarged, so that it had a bottom width of 25 feet, width on the water line of 40 feet and depth of 5 feet. As originally constructed the capacity of the boats using the canal was 18 tons each, but in 1845 section canal boats of 44 tons were introduced.

The boats at present in service on the Morris Canal have a length of 90 feet, beam of 10 feet 6 inches and loaded draft of 3 feet 10 inches, with a carrying capacity of 70 gross tons.

From a tonnage of 58,259 tons in 1845 the traffic on the canal increased to 889,220 tons in 1866, the maximum. After the property came into the possession of the Lehigh Valley Railroad, the tonnage dropped to 685,191 in 1872, 288,011 in 1892, 27,392 in 1902, and since that date has varied from 88,773 tons in 1906 to 158,966 tons in 1913 and 145,476 tons in 1914.

For the past fifteen years there has been a persistent effort upon the part of the several interests involved to agree upon some basis whereby the canal could be abandoned. At the direction of the Legislature three commissions have, since 1903, studied the subject and submitted plans whereby the State could take over the canal property, including the valuable water-rights. The problem is a very complicated one and the various interests involved so conflicting that nothing has thus far been accomplished. It is generally conceded that its days of usefulness as a carrier of commerce have passed. The main contention is as to the ultimate ownership of the termin-

als in Jersey City, which were secured from the State in the early days of its construction, and have since become very valuable. The lessee, the Lehigh Valley Railroad, admits that it is operating the canal at an annual loss. The revenue derived from the tonnage handled in 1913 was $38,548.04, and for 1914, $33,757.19.



Morris Canal Route

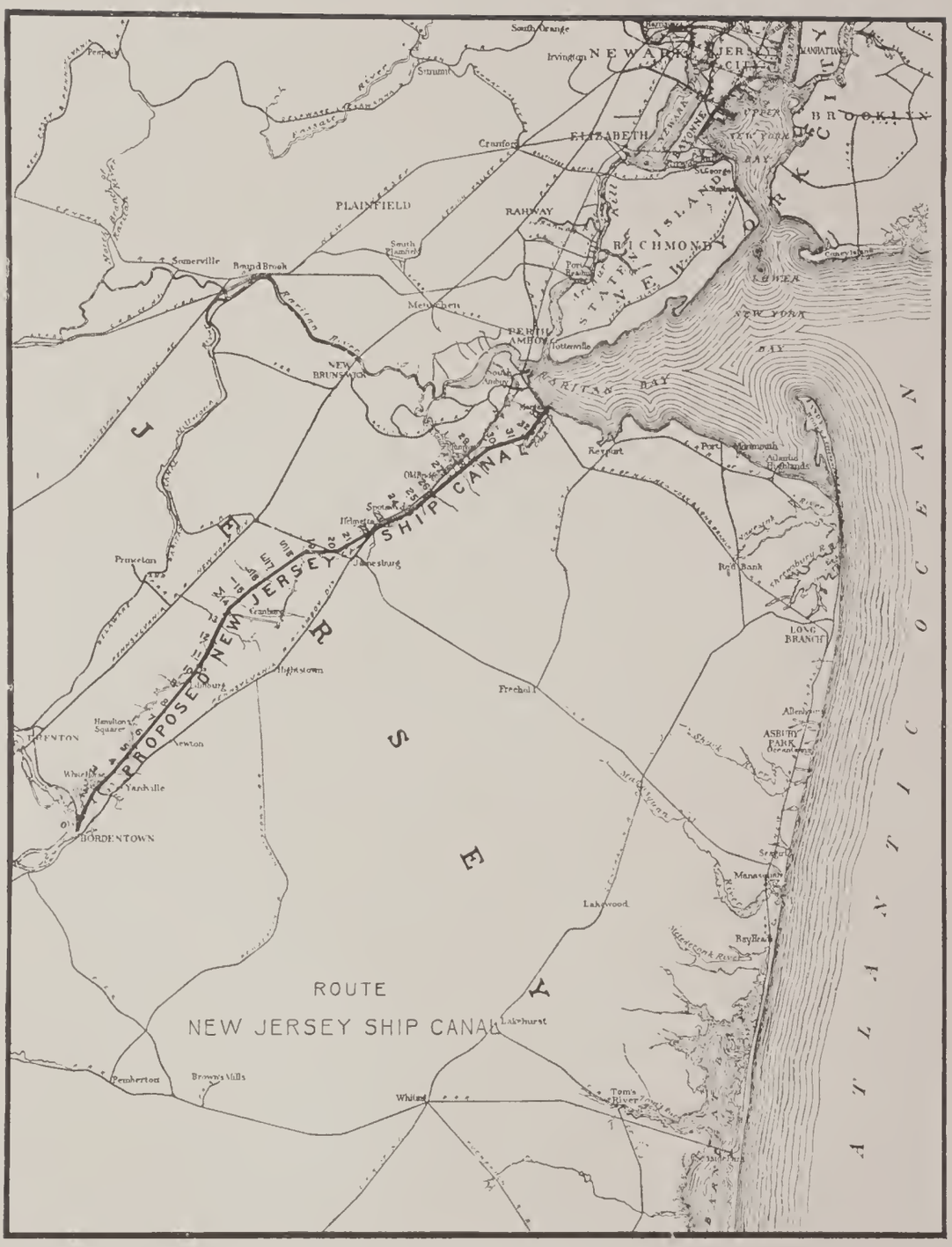
NEW JERSEY SHIP CANAL (PROPOSED)

In 1907 there was formed The Atlantic Deeper Waterways Association, the object of which was to secure an inland waterway along the Atlantic seaboard. Among the projects in the propaganda was a canal across the State of New Jersey. In pursuance of this object there was included in the River and Harbor Bill of March 3, 1909, a provision authorizing the Secretary of War to cause a survey of the best route for such a canal and estimates of the cost of constructing the same. Acting in accordance with this provision, the Secretary of War appointed a special board of Army Engineers to carry out the instructions of Congress. The board of engineers made their report to the War Department under date of October 14, 1911 (House of Representatives Document No. 391, 63d Congress, 2d Session).

After a careful study of all conditions, it was deemed by them wise to eliminate the enlargement of the Delaware and Raritan Canal, as had been suggested, and to select an entirely new route. The board next made a study of the report of a survey which had been made in 1894-5, at the instance of the city of Philadelphia, of a proposed route from Bordentown on the Delaware River to the Raritan River, following a line nearly parallel to the Pennsylvania Railroad as far as Monmouth Junction and thence down the valley of Lawrence Brook to Parson's Dam, and thence to the Raritan River at Sayreville. It was found, however, that this route would entail the building of several expensive railroad bridges, to accom-

modate railroad tracks carrying a heavy travel. On account of the large amount of travel over these bridges, the frequent opening and closing of them would cause serious delays and undoubtedly be a handicap to the canal commerce. Furthermore, a study of the topography of the country showed that on account of the rock formation between Princeton Junction and Monmouth Junction, the cost of construction would be excessive. It was, therefore, decided to select a route further south and east, along the "line of least resistance," so as to avoid passing directly through any towns, or under any bridges, which might impede quick movement of the traffic.

The route selected runs from a point on the Trenton and Bordentown Branch of the Camden and Amboy Division of the Pennsylvania Railroad in a generally northeasterly direction up the valley of Crosswicks Creek to the highlands at Hutchinson mill pond; thence continuing in a general northeasterly direction passing to the east of Edinburgh, about midway between Princeton Junction and Hightstown, and about two miles west of Cranberry to a point about three miles west of Jamesburg; thence passing through the valley of Manalapan Brook and South River to a point one mile east of Runyon; thence continuing in a general northeasterly direction over the highland near Cheesequake Creek and through the valley of this creek to Raritan Bay at Morgan. The length of the canal on this route would be 33.7 miles, which, with the distance on the Delaware River and New York Bay, makes the entire distance from the wharves in Philadelphia to the Battery in New York City about 87 miles.



Route of proposed New Jersey Ship Canal

The plans call for a sea-level canal with a bottom width of 125 feet and a depth of 25 feet at the lowest stage. Subsequently, however, the Chief of Engineers recommended to Congress that a canal of lock type with a 12 feet depth and 90 feet bottom width be first given consideration on account of the initial cost.

The estimated costs of the several depths and types of canals proposed, together with the estimated annual maintenance charges and interest on the cost of construction, are as follows:

	Sea Level.		Lock.	
	Width 125 feet, depth 25 feet.	Width 90 feet, depth 12 feet.	Width 125 feet, depth 25 feet.	Width 90 feet, depth 12 feet.
Cost of Construction	$45,000,000	$31,557,672	$29,781,367	$18,736,230
Annual Maintenance	$312,217	$266,672	$713,999	$604,000
Annual interest at 3% cost of construction	1,350,000	946,730	893,441	562,087
	$1,662,217	$1,213,402	$1,607,440	$1,166,087

The canal, however, is to be planned and constructed with the idea of, at a future date, being changed to a sea-level canal and enlarged to a 25 feet depth. With this idea in view, it has been recommended that any right-of-way provided should be not less than 1,000 feet in width.

In 1911 the Legislature of New Jersey, in a series of Joint Resolutions, commited the State to purchase and donate the right-of-way to the Federal Government,

whenever it was ready to build the canal. The resolution reading:

"BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

(1) "That the construction of a canal across the State of New Jersey, connecting New York bay with deep water in the Delaware river at Bordentown, New Jersey, by the Federal Government, is an enterprise which is likely to result in great benefit to this State and its inhabitants, in encouraging the various industries of the State, and affording a more ready method of communication and transportation between points within this State and other points in this country and abroad, particularly in view of the importance of this canal as a necessary link in the intra-coastal system of inland waterways, extending from Maine to Florida, which, when completed, will be of inestimable benefit to transportation along the entire Atlantic seaboard.

(2) "That in order to bring about the construction of this canal and its completion within as short a time as possible, on behalf of the people of this State, it is hereby declared that when the Government of the United States shall finally settle upon the route of the said canal, and shall make provision for its construction by suitable appropriation, the State of New Jersey shall acquire the right of way for the said canal by purchase or condemnation from the owners thereof and cede the same to the Federal Government for the use of the government in construction and maintaining the said canal, upon condition that the said canal, when completed, shall be free and open to the commerce of the world, without tolls or charges for the passage of vessels or freight thereon; *provided,* the right of way can be obtained

by purchase or condemnation for a sum not exceeding five hundred thousand dollars, or such sum as may be appropriated by the Legislature for that purpose at the time when such appropriation and other legislation necessary to carry into effect the purposes of this resolution, shall become necessary and appropriate."

The Legislature of 1911, in order to carry out the spirit of the above resolution, authorized the appointment of the New Jersey Ship Canal Commission and delegated to it the duty of ascertaining the cost of the right-of-way and other details in connection with the proposed canal. This Commission, beween 1912 and 1914, monumented the center line of the route from Bordentown to Jamesburg, plated the property adjacent to the proposed route with the names of the owners thereof and the value of the lands to be taken.

In 1914 the duties of the New Jersey Ship Canal Commission were merged into those of the New Jersey Harbor Commission, but as no appropriation was made to continue the work of monumenting the proposed route of the canal, nothing could be done to continue this work under the merger, and the monumenting of the other half remains to be completed.

The commercial importance of a protected waterway as proposed, uniting, as it would, two of the greatest centers of population and manufacture in the United States, cannot be overestimated. Furthermore, the construction of this link, in the general plan will unite all of the territory between Boston on the north and Florida on the south. Its strategic value in naval warfare has been

approved by all naval experts, making it possible to reach the various sections of the Atlantic Coast and the several navy yards thereon without going out into the ocean.

NEW JERSEY'S INLAND WATERWAY

Along the Atlantic coast, from Cape May to the northern end of Barnegat Bay, nature has provided a natural inland waterway consisting of large expanses of water, called bays, which are connected one with the other by narrower channels, known as thorofares. In their original condition these waters were generally shoal, with here and there a deep channel, and were only navigable throughout their length for the lightest draft boats.

With the building up of the numerous summer resorts along the coast, which has reached its greatest development within the last ten years, and the coming into popularity of the gasoline motor boat as a means of connecting the various developments, there arose a demand for a continuous and easily navigable channel throughout this stretch of territory.

The River and Harbor Bill of 1886 contained a provision for a preliminary survey and report upon the advisability of the Federal Government improving the "throughfare running back of the ocean from Cape May to the Great Bay north of Atlantic City." The Federal Government views these improvements purely from a commercial standpoint, and, as a result of this survey, the engineers of the War Department reported in 1888 that, owing to the lack of commerce, the channels were not worthy of improvement by the United States Government.[1]

[1] Report of Chief of Engineers, U. S. A., 1888, part 1, pp. 728-734.

In 1907, however, the matter was again agitated and the Legislature of that year instructed the State Geologist to prepare two estimates of the cost of deepening the channels from Bay Head to Cape May, one of which was to provide a channel depth of eight feet at low water, and the other a depth of ten feet, and in each case to have a width of fifty feet. The report on this survey was embodied in the Annual Report of the State Geologist for 1907. At the next session of the Legislature a project for a channel of six feet depth and one hundred feet width was formally approved and the first appropriation was made with which to begin the work. Through subsequent appropriations the work has been continued and the channel is now practically completed. Its value to the development of this section of the State is quite evident. To it can be traced a material increase in the taxables of the counties through which it passes, increasing the popularity of resorts already started and aiding in the building up of entirely new ones. While it was not built as a result of any large volume of coastwise commerce, existing or in prospect in the future, it has been the means of greatly increasing the actual commerce carried over this route, especially that connected with the fishing industry, and this will undoubtdly grow as the advantages are better known.

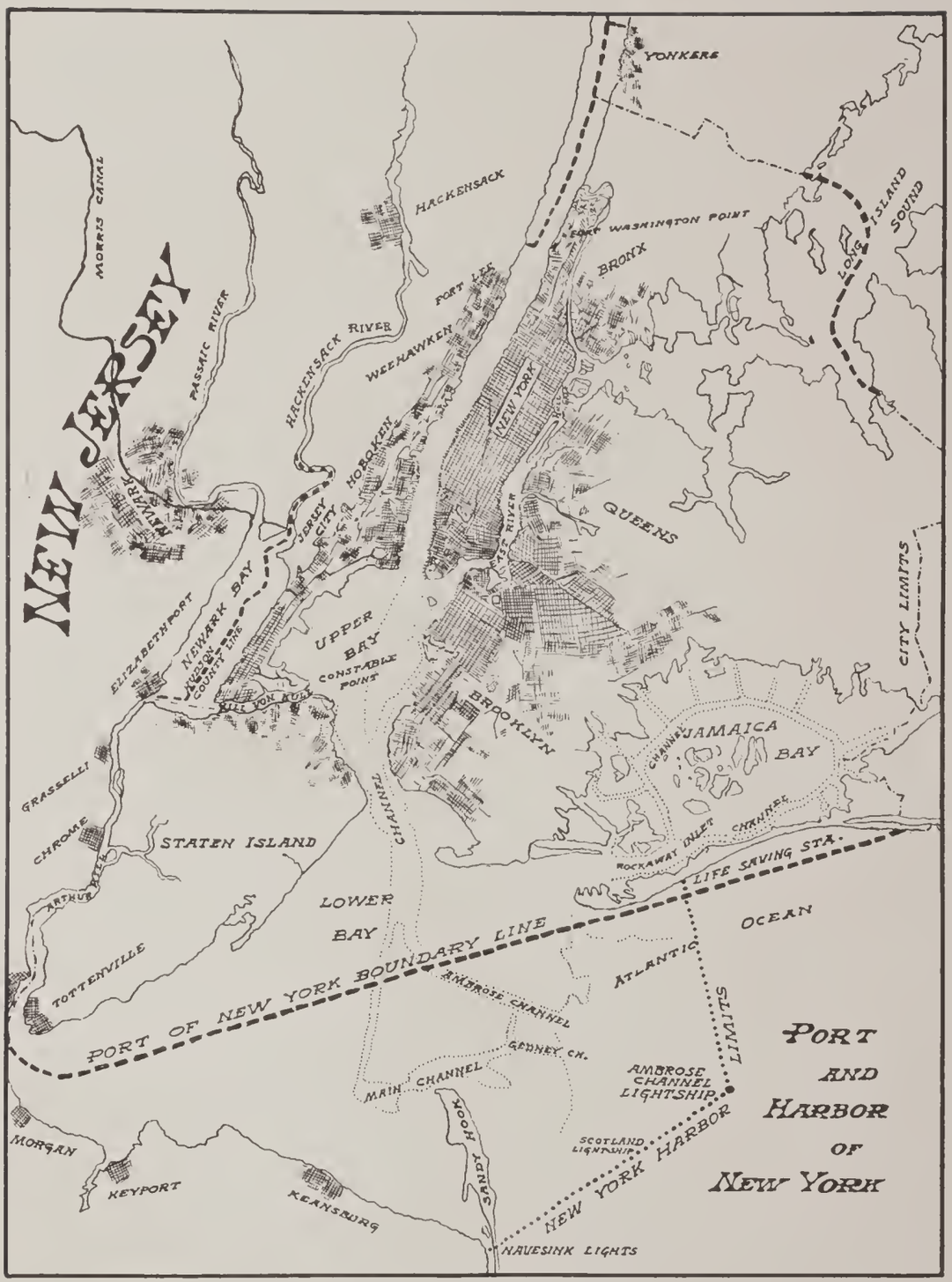
There is to-day an inside waterway 114 miles in length paralleling the ocean for two-thirds of the State's frontage on the Atlantic Ocean. The channel begins at Bay Head, in Ocean County, thence passing through Barnegat Bay and the numerous thorofares and bays to Cold Spring Inlet at Cape May, where an extensive har-

bor is being constructed under Federal authority. The channel generally follows the natural channels wherever possible. In order, however, to meet certain conditions, it was necessary to construct numerous cut-offs and connecting canals. Connecting with this inland waterway are several rivers and creeks under improvement by the Federal Government and furnishing water connections to towns and villages of some local importance. There is, during the summer months, a population of approximately five hundred thousand people located along this waterway.

In 1903, in accordance with instructions of the Legislature, the State Geologist prepared plans and estimates of cost of a canal to connect the Manasquan River with the upper end of Barnegat Bay, which report is contained in the Annual Report of the State Geologist for 1903. Nothing, however, was done with this proposition until 1911, when the general project was adopted. It contemplated a canal of six feet depth and sixty feet width, which was subsequently increased to one hundred feet in width, along the line as laid down in 1903. The selection of the route was, however, in 1914 left in the hands of the Commissioner of Inland Waterways, subject to the approval of the Governor. An appropriation of $25,000 was made for the purpose of obtaining the right-of-way, and the preliminary work to this end is now being actively carried on.

These two projects, aside from the Shark River Inlet improvement, represent the principal, if not entire, investment of the State of New Jersey towards the improvement of her waterways. While neither of them was in-

tended to be a direct revenue producer, they have already demonstrated the advisability and desirability of the State helping to improve and provide improved waterways.



Port and Harbor of New York

State Control Over Navigable Waterways

The State of New Jersey is more favorably located than any other on the Atlantic Coast, in that, portions of its territory are located within the limits of two of the great Atlantic ports. A peculiar feature in this connection was the way in which the early growth and development of these two ports took place. In Manhattan the greater development was confined to the eastern banks of the Hudson River, while the development on the Delaware River took place on the western shore.

The exports and imports of these two ports constitute over 50 per cent. of the entire export and import trade of the United States and represent an aggregate value of over one hundred and twenty-five million dollars. While it is quite true that much the largest part of this is landed directly, either in Manhattan or Philadelphia, it will be noted by the maps that the New Jersey water front in each of the ports constitutes a large part thereof, and the future expansion of both ports will naturally turn to the development of the New Jersey water front.

The State of New Jersey has been censured for its lack of foresight in permitting so large a proportion of its water front in and along its several harbors and navigable waterways to fall into the hands of private interests. It must be remembered in this connection that in the early days there did not appear to be any prospective demand for a State, or municipally-owned water front

policy, while there did exist a strong popular demand for adequate railroad facilities, including terminals. Both Jersey City and Camden, which are opposite the large metropolitan cities, furnished the ideal, and in fact only, locations for such terminals.

This railroad ownership of large tracts of the most favorably located lands along the various waterways of the United States has been severely criticised by several Congressional investigations and by independent writers, and New Jersey has probably suffered more in this respect than any other State. This has been due largely to her peculiar situation, lying as she does between the two great cities of New York and Philadelphia and being traversed by numerous railroads—all seeking an outlet at tide water.

Within the last thirty or forty years, New Jersey, in common with other States, has suffered in the decline in canal and inland water transportation. The increase in railroad facilities has been enormous, and these corporations have from the first striven, and now practically succeeded, in killing the competition of inland water transportation. This has been accomplished, (a) through purchase of controlling interests in the canals; (b) through purchase of the most valuable portions of water front property; (c) through absorbing certain charges in connection with both local and import and export traffic.

The struggle to secure complete mastery over water traffic, as well as to provide facilities for taking care of this traffic, has been an expensive one, especially in view of the numerous State and interstate regulations placed

upon them. Within the past year the railroads have received from the Interstate Commerce Commission permission to raise their passenger and freight rates, fearing no longer the competition which water carriers might have offered.

Had New Jersey accepted, in the early days, her full duty and responsibility of developing certain water facilities and then maintained them, as has been done in some other States, these waterways would now be offering an important source of competition with the railroads and have compelled them to have constantly maintained their operating standards at the highest level and state of efficiency, and there would probably have been no logical reason for the request for an advance in rates.

When the electric street railway lines were first introduced there were many people who prophesied all sorts of disasters to the existing railroads. The results have been the direct opposite. While the railroads have lost some local passenger business, they have gained an hundred-fold; first, in the number of residents of the cities who removed to suburban places; second, in the great increase in general travel which such facilities conduced; third, in the increase in the amount of local freight which the railroads have secured to supply the needs of this suburban exodus. In fact, the trolley roads have served as feeders of the steam roads. So will a canal or waterway, constructed and maintained in accordance with modern ideas and operated in the interests of the people, actually prove a benefit to the railroads.

While it is true that waterways have, wherever improved, reduced the freight rates, the increase in the

amount of freight offered to the railroads has more than offset the lowering of the receipts therefrom. The reduction of freight rates has made manufacturing more profitable, and the more this has been the case, the more existing industries have expanded, or new ones created, which means the greater the amount of traffic offered.

Waterways are adapted to the transportation of the heavier, bulkier and coarser class of commodities, such as coal, sand, stone, ores, etc., which pay the lowest rates of freight, while requiring the maximum of equipment and facilities. The higher grade of freight, paying the higher rate of transportation, should, from the economic standpoint, be carried in most cases by rail. There should be no antagonism between water carriers and rail carriers. Their interests are interlocked and can be made mutually beneficial.

A study of the early history of the State and of the constitutional restrictions reveals several important facts as to why New Jersey has in the past so sadly negelcted her waterways and allowed a source of wealth and income to slip away from her.

First—In the early days there was a strong and active railroad and corporation "lobby," busy at all times, at the State Capitol. The principal duties of this lobby were to secure the passage of such legislation as the railroads desired and to prevent any legislation inimical to their interests.

Second—The public school funds are the beneficiaries of the sale of the State's riparian lands. It is, therefore, essential that such lands shall bring in large returns, and the question as to the kind of development which is to

take place thereon has, in the past, been of secondary importance. The result has been that the railroads and other large corporations were in a much better position than the individual to buy such riparian lands, and hold them as against a prospective competitor.

Third—This policy of the sale of riparian lands tending to keep down the annual tax required to maintain the free public schools, has appealed directly to the average voter, who was not interested in waterway development. As a consequence there has been no concerted movement, within the State, to alter or amend these provisions.

Fourth—Under the Constitution of New Jersey, the Legislature is not permitted to create any debt which shall singly, or in the aggregate with any previous debts, at any time exceed one hundred thousand dollars, except for the purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by law for some specific object, or work, and adopted by a majority of voters at a general election. On account of the unpopularity of such a plan by sections of the State remote from the ports aforementioned, no political party has ever dared to present such a proposition, and whatever has been accomplished in the State in the way of municipal ownership of water terminal facilities has been of a local character and, therefore, limited to the resources of the separate communities. There has been enacted legislation, of one kind or another, permitting cities bordering on navigable waterways to improve their shipping facilities. One of these acts permits municipalities bordering on navigable waterways to issue bonds in amounts

not to exceed two million dollars for this purpose, and several of the communities, especially Newark, Trenton and Camden, have availed themselves of these privileges.

Recently the suggestion has been made to permit a State Commission to secure such water front property as thought advisable by purchase or condemnation, the said Commission to issue its bonds, or other form of indebtedness, which would be secured by a general mortgage upon the property so purchased. This plan, which is similar to the one proposed by the Water Supply Commission, has, however, been declared by the courts unconstitutional and repugnant to the provision above noted. In view of this decision, there now remain only two methods by which the State can take over the control of its water frontage; first, by direct appropriation by the Legislature of the amount necessary to carry out the proposition; or, second, by a bond issue, which must have the approval of the people at a general election.

In a study of the causes for the great strides which have been made in certain ports of the world, the point which stands out more prominently than any other is the question of policy and administration. Public opinion in this, as in every other matter of civic life, has an important bearing upon its development. Where water front property is in the hands of the municipal authorities, unless a public interest is created the development is always along narrow and ofttimes misguided lines. It is generally conceded that the water frontage in the hands of private interests will not be administered for the public benefit unless the public, through its duly constituted officials, can exercise some control over such private prop-

erty. The benefits to be derived from the location upon navigable waterways belong to all the people. The individual, or corporation, must be permitted to take his principal profit out of the ships, or out of the benefits which accrue as a result of location through the convenience in loading or unloading of raw material or finished products, while at the same time permitting, under proper restrictions and reasonable charges, the use of such terminal facilities by the general public.

From what has already been stated it will be seen that the most logical manner in which the State of New Jersey can take up the active participation in waterway development would seem to be through supervision, or control, over *all* waterfront property. The kind or character of supervision may be subject to modification before the ideal plan has been worked out, but the need therefor will hardly be questioned by those who have made a study of existing conditions.

The first attempt at any systematic control over the development of the waterways of New Jersey was the appointment, in 1911, in pursuance of a Joint Resolution of the Legislature, of a Commission to study and report upon the port conditions of the Port of New York. The wording of the preamble to this resolution will convey an idea of the conditions, as they existed in this particular case, and is indicative of the situation all over the State. The resolution was as follows:[1]

> "WHEREAS, Many autonomous communities in both the States of New Jersey and New York are embraced within the confines of the port of New York;

[1] Laws of New Jersey, 1911, pp. 840-841.

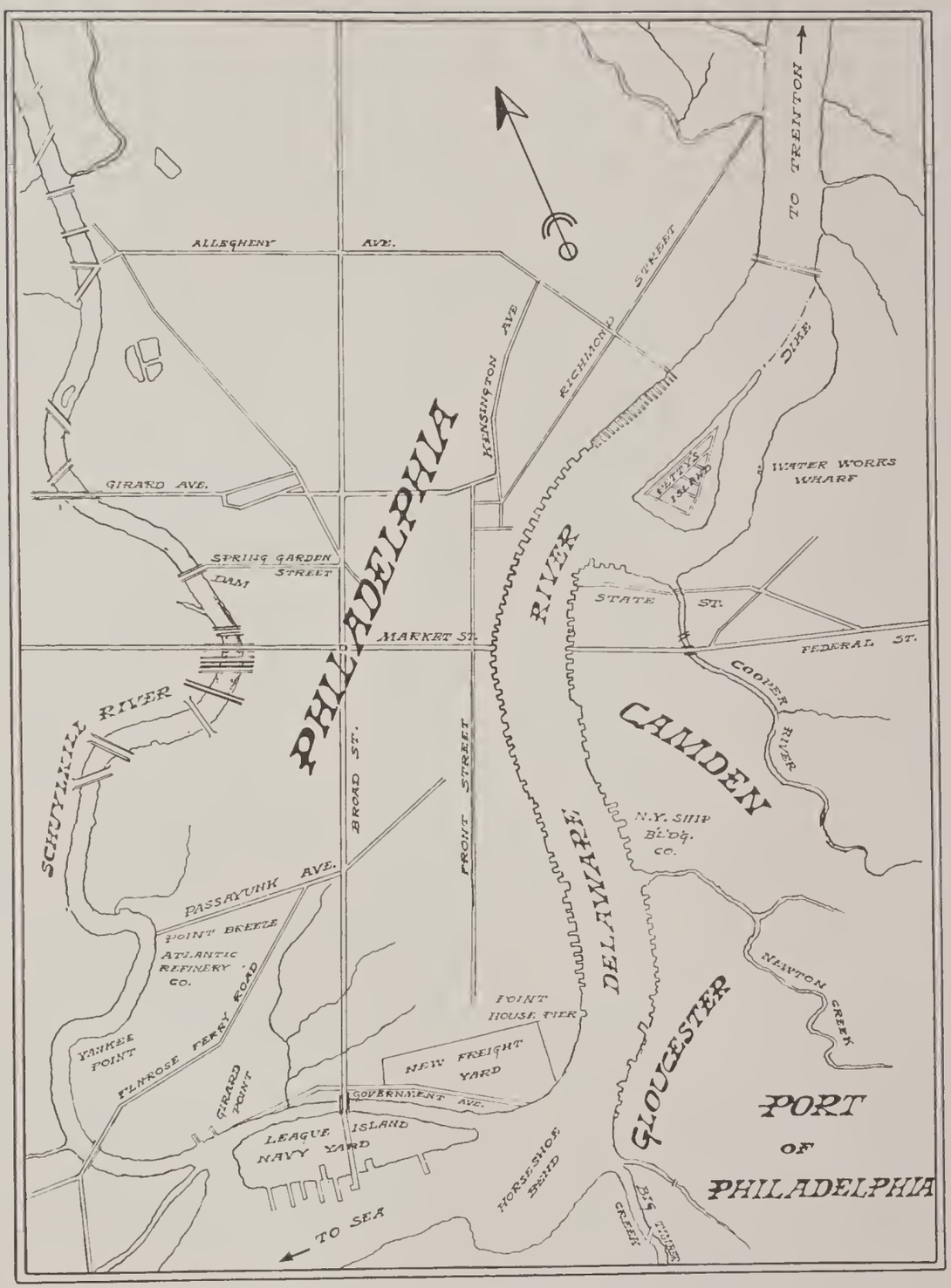
"WHEREAS, Each of such communities exercises local control of its water front facilities without co-operation, for the common good, with other communities within the port;

"WHEREAS, Questions of vital importance to said communities, such as the extension of pierhead lines, the harmonizing of the relations of water and rail-carriers, the intelligent reduction or port charges, the adoption of modern methods to the trans-shipment of freight between rail and water and to local distribution of freight in congested localities are arising daily and urgently call for joint action if the port is to hold its pre-eminence among the ports of the world;

"WHEREAS, An adequate study of the needs of the port should demonstrate what action is desirable on the part of public authority to bring about needed reforms and improvements; now, therefore,

"BE IT RESOLVED, That the Governor of the State of New Jersey is hereby authorized and requested to appoint three commissioners of experience and skill in matters relating to the construction and operation of port facilities, both rail and water, to act jointly with three commissioners similarly appointed by the Governor of the State of New York, and with a seventh Commissioner appointed by the President of the United States. * * * *."

Following the appointment of this Commission matters relating to the modification of harbor lines were taken up with the Federal Government and plans prepared for a comprehensive development of the flats on Upper New York Bay, in front of Jersey City and Bayonne. In its third report the Commission says:



Port and Harbor of Philadelphia

> "There has been no higher authority over the New Jersey water front after it was once sold out by the State than the building inspectors of some municipality who might pass on the safety of the structures."[1]

In the fourth report of this Commission the following statement is made:

> "From the studies made of the organization of important seaport throughout the world, and from the observation of the present tendency of modern seaports to become public, as far as possible, for the receipt and shipment of commerce, it would appear that the only plan by which New Jersey can reap its proper share of the benefits from commerce is by the creation of a central port authority. It is probably impossible for enough of the communities to get together to form general port bodies in various local districts, and it therefore seems necessary that such a body should be a state body. * * *."[2]

This Commission advocated the creation of a permanent Harbor Commission whose duties and powers should be (a) to consider and report upon all plans and projects which may be submitted to it by any municipality; (b) to render such assistance as may be necessary in the preparation of plans for harbor improvements; (c) to act with, and in behalf of, communities, or municipalities, requiring action by the Federal Government; (d) to approve, disapprove or modify any and all plans proposed by public or private interests, which involve any changes,

[1] "Harbor lines on New Jersey side of Upper New York Bay and General Observations on New Jersey's Commerce," 1913, p. 4.

[2] "New Jersey's Relation to the Port of New York," 4th Preliminary Report of the New Jersey Harbor Commission (1913), p. 5.

or modifications of existing conditions on the navigable waterways of the State.

As a result of the above recommendations, the New Jersey Legislature of 1914 passed a law creating the New Jersey Harbor Commission.[1] This law provided, in brief, for the appointment of a Commission of five members, for such terms that one will expire each year; that the members shall serve without compensation; that it shall report annually to the Legislature on the condition of the water front, or harbor facilities, and any other matters incident to the movement of commerce; to make such recommendations to the Legislature, and to municipalities within the State, that it deems necessary and advisable; to remove by appropriate action, obstructions or interference with the movement of commerce and navigation; to pass upon all plans, either by public or private interests, for the development, improvement or modification of the water front; to aid municipalities, when requested, in the preparation of plans for development and improvement of their water front.

With such a comprehensive scope given it, the New Jersey Harbor Commission, in order to the more effectively fulfill its duty, divided the State into five zones, and placed each in charge of a commissioner. Every plan for improvements along a waterway of the State was referred to the commissioner in charge of that zone for his report and recommendation before it was acted upon by the Commission. Already familiar with local conditions, he was in a position to decide upon the adequacy of and necessity for the improvement. The engineering features

[1] Laws of New Jersey, 1914, chapter 123, p. 205.

of the proposed improvement could be determined in most cases by the chief engineer of the Commission from the commissioner's report. Thus applications for permits were promptly and intelligently handled and comprehensive development throughout the State obtained. All actions of the individual commissioners, however, were subject to the final approval of the entire Commission. The constructive work performed by this Commission, during the one year of its existence, has been remarkable and amply shows the wisdom of the State policy adopted. This plan of carrying out the various provisions of the law is believed to be unique in harbor work.

It might be added, though, that the weak parts of the law of 1914 were the provisions which gave the New Jersey Harbor Commission concurrent jurisdiction over navigable waterways with the Riparian Commission and specified that their powers and duties were "co-ordinate therewith and in addition thereto." Under these provisions the duty devolved upon the Harbor Commission to see that, before any plans were approved, the applicant had secured title to the lands under water by purchase, or lease, from the State, and, where such had not been obtained, withhold its approval of the project, thus subjecting the Harbor Commission to unjust criticism and the applicant to delay, since the only body which could give title to these riparian lands was the Riparian Commission.

The plan for controlling and developing the waterways of the State along the plans laid down in the act creating the New Jersey Harbor Commission is now recognized as an advanced step in the solution of this much discussed subject. The benefits have been both di-

rect, as they relate to the property interests along New Jersey's waterways, and indirect as concerns the relations between the State and the Federal authorities. In a recent discussion of this Commission before the National Association of Port Authorities in Baltimore, Colonel William M. Black, Division Engineer, United States Army, said:

> "* * * until very recent years New Jersey was more backward in the care of its harbors and ports than any other State; it left more to individual action than any other State of which I have knowledge. * * * As the matter now stands, whenever any Federal question comes up regarding New Jersey, the Federal officials have a Board with whom they can consult, able to reach all sources in New Jersey, and able to represent the needs of New Jersey officially, and being a State board, able to represent the needs of the whole State rather than those of a community or of a part of a community. The labors of the United States Government have been greatly helped by them. * * * I believe that the establishment of this Commission was a long step in advance taken by New Jersey for the proper development of her waterways and of her waterfront."

As a matter of "economy and efficiency," the Legislature of 1915[1] combined the Harbor Commission and the Riparian Commission, together with the Inspectors of Power Vessels and the Department of Inland Waterways, into one department to be known as the Department of Commerce and Navigation, with all the powers and duties heretofore possessed by the individual Commissions and Departments.

[1] Laws of New Jersey, 1915, chapter 242, p. 432.

Under this reorganization the development and improvement of navigable waterways will be controlled by a Commission of eight members, serving without pay and authorized to appoint a Chief Engineer at an annual salary not to exceed five thousand dollars, as well as heads of such other departments and employes therein. This branch of the State government will now be in a position to promptly examine the facts relating to, or bearing upon, applications, both for riparian rights and development of waterways from the records within its own control, and can make such provision for the sale of riparian rights as will be of the greatest benefit to the improvement of New Jersey's water front, from the standpoint of commercial advancement. It is too early to see how effectively the question will work out, but the Department certainly has all the powers necessary to a proper control over waterway development along, or under, a comprehensive and systematic plan.

The law creating the Department of Commerce and Navigation, as well as the several laws, or abstracts thereof, which will control and limit the operation of the new department, will be found on the following pages:

Laws Relating to Department of Commerce and Navigation

An Act creating a department to be known as the Board of Commerce and Navigation and vesting therein all the powers and duties now devolved, by law, upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, and the New Jersey Harbor Commission.

Approved April 8, 1915.

Laws of New Jersey, 1915, p. 432.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. A department of commerce and navigation is hereby established, and the same shall be governed by a board to be known as the "Board of Commerce and Navigation."

2. The Board of Commerce and Navigation shall consist of eight members, not more than four of whom shall be members of the same political party, and all of whom shall be residents of the State. No riparian leases or grants shall be allowed by the board except when approved and signed by the Governor.

3. The members of the Board of Commerce and Navigation shall be appointed by the Governor, by and with the advice and consent of the Senate, for the following terms, to commence on the first day of July, one thousand nine hundred and fifteen: two for one year, two for two years, two for three years, and two for four years. Annually thereafter two members shall be appointed for a term of four years. Vacancies shall be filled for the unexpired terms. The board shall be pro-

vided with suitable offices at Trenton, at which all original records shall be kept. The board may, however, for local purposes establish sub-offices in other parts of the State. The board shall meet every month at Trenton and at such times as its rules may prescribe and at such other times and places within the State as in its judgment may be necessary. The board shall elect one of its members President who shall hold office for one year and until his successor shall be elected.

The members of the board shall receive no compensation for their services, but the State Treasurer shall, upon the warrant of the State Comptroller, pay their necessary expenses.

4. The board shall select a person who shall be known as the "Chief Engineer of Commerce and Navigation," who shall be a resident of this State and a qualified engineer, who shall also be one of the division chiefs. In case the board cannot agree because of a tie vote therein, upon the selection of a chief engineer, the Governor shall be requested to sit with said board for the purpose of casting the deciding vote. Said Chief Engineer of Commerce and Navigation shall receive a salary of not more than five thousand dollars per annum, to be paid out of the treasury of this State as the salaries of other employes are now, or may hereafter be, paid. He shall devote his entire time to the duties of his office, and shall serve for a term of four years, and until his successor has been appointed and qualified.

5. The Board of Commerce and Navigation shall succeed to and exercise all the powers and perform all the duties now exercised and performed by or conferred and charged upon the Board of Riparian Commissioners, the Department of Inland Waterways, the Inspectors of Power Vessels, appointed under chapter ninety-one of the laws of one thousand nine hundred and six, and the

acts amendatory thereof and supplementary thereto, and the New Jersey Harbor Commission (with which last-named commission the New Jersey Ship Canal Commission was consolidated, by the provisions of chapter two hundred fifty-one of the laws of one thousand nine hundred and fourteen).

6. The Board of Commerce and Navigation shall also have power to create sub-departments or divisions, to take specific charge of the different lines of work contemplated in this act, and shall have power to appoint heads or chiefs of such sub-departments or divisions.

7. The Board of Commerce and Navigation shall have full control and direction of all State projects and work relating, in any way whatsoever, to commerce and navigation, except such work as is conferred upon other boards, not included within the provisions of this act. It shall make such rules and regulations governing work of the departments and the conduct of its employes as, in its opinion, may be necessary to promote the interests of the State, in all matters herein committed to its charge. It shall fix the salaries of all employes.

The Board of Commerce and Navigation shall report annually to the Legislature.

8. The Chief Engineer of Commerce and Navigation shall attend all meetings of the board, and shall be ex officio secretary of the board. He shall be subject to the rules and regulations of the board, and shall exercise general supervision over all projects relating to the commerce and navigation within and about the State, and all work in any way relating thereto. He shall be and hereby is charged with the enforcement of all laws relating to the powers and duties of the board and to the commerce and navigation of the State and also all the rules and regulations made by said board. He shall obtain, collect and preserve such information relating to the

State's commerce and navigation and to the ways and means by which the same may be advanced, and also relating to the work of the department as may be useful in the discharge of his duties, or which may contribute to promote the interests of the State. He may, and any person authorized by him so to do may, without fee or hindrance, enter upon, examine and survey all waterways in and about the State, all riparian lands, and all proposed waterways.

9. The Board of Commerce and Navagiton, by its presiding officer, each of its committees by their chairman, and the Chief Engineer of Commerce and Navigation, shall have authority to administer oaths, and to examine under oath, in any part of the State, witnesses in any matter relating to the powers and duties of the departments, and to the commerce and navigation of the State. For this purpose, it may issue subpoenas, signed by its president and secretary, requiring the attendance of witnesses and the production of books and papers in any part of the State before it, or before any of its committees, or before the Chief Engineer of Commerce and Navigation, and any person who, being served with a subpoena issued pursuant to the provisions of this act, shall fail to attend or who shall fail to give testimony, unless such testimony incriminate him or subject him to a fine or punishment, shall be liable to a penalty of five hundred dollars for each and every offense, to be recovered in the name of the State of New Jersey; said penalty, when recovered, to be paid into the treasury of the State of New Jersey; and it shall be the duty of the Attorney-General to prosecute any and all actions for the recovery of penalties, when requested so to do, and when, in his judgment, the facts and the law warrant such prosecution. Any person who, having been sworn by the presiding officer of the board, or the chairman of any of its committees, or by the Chief Engineer of Commerce

and Navigation, and who wilfully gives false testimony, shall be guilty of perjury.

10. The Chief Engineer of Commerce and Navigation may be removed by the Governor, after a hearing; *provided* that charges against him have been submitted, in writing, signed by a majority of the members of the board; *and provided, further,* that the Governor finds such charges to be true in fact, and their nature such that, in his opinion, the best interests of the State demand the removal of said Chief Engineer.

11. All of the employees of the Department of Commerce and Navigation shall be appointed and shall hold their positions subject to the provisions of an act entitled "An Act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight.

12. Immediately upon the organization and establishment of the Board of Commerce and Navigation, it shall become the duty of the heads or chiefs of the several sub-departments to codify the various laws which have been passed, from time to time, relating to or concerning, in any way whatsoever their respective departments, which codification shall set forth, in a clear and comprehensive manner, the origin of such department, meaning thereby its creative act, after which shall follow, in their proper order, all existing acts amendatory thereof and supplementary thereto, and all acts relating to its consolidation (if any there have been) with any other board or boards, commission or commissions, department or departments. Said work of codification shall continue, from year to year, after the principle herein set forth, with the idea of preserving, in concrete form, the history and development, or evolution so to speak, of each special

department, and contributing materially to a better and more comprehensive understanding of all laws relating thereto, and of the powers and duties devolved upon said departments by said acts.

13. Whenever, in any act, the words the "Board of Riparian Commissioners," the "Department of Inland Waterways," the "Inspectors of Power Vessels," the "New Jersey Harbor Commission," and the "New Jersey Ship Canal Commission," are used, the same shall be taken to be and to mean the Board of Commerce and Navigation.

14. The officers and employees now in the employ of the old boards or commissions hereby consolidated shall be retained in their present offices or positions and shall continue as employees of the Department of Commerce and Navigation, unless removed in accordance with the provisions of an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, one thousand nine hundred and eight. The Chief Engineer of Commerce and Navigation, however, may, with the approval of the board, abolish any office or position which in his judgment it may be unnecessary to retain.

15. All acts and parts inconsistent with the provisions of this act be and the same are hereby repealed, and this act shall take effect on the first day of July, one thousand nine hundred and fifteen; *provided,* however, that if any section, or parts thereof, of this act shall be questioned in any court, and shall be held to be unconstitutional and void, the sections or parts thereof so declared to be invalid shall be exscinded and the balance of the act shall stand as though said sections or parts thereof had never been included within the provisions of this act.

Digest of Laws Relating to the Riparian Commission

An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in the State.

Approved April 11, 1864.

Laws of New Jersey, 1864, p. 681.

This is the basic act upon which all subsequent riparian legislation rests. It provides for the appointment of a Board of Commissioners to consist of six citizens, who "shall not be or become interested, directly or indirectly, in any water rights, or rights to occupy lands under water, in the said bays or rivers" (as noted below). The Commission shall have power and it shall be their duty to cause surveys to be made of the lands lying under the Bay of New York, of the Hudson River, the Kill von Kull, Newark Bay, Arthur's Kill and Raritan River, as well as those of the Delaware River opposite the county of Philadelphia; to ascertain the value of these lands; to fix and establish exterior lines in said waters beyond which no piers shall be erected; to recommend to the legislature before February 1, 1865, such plans and provisions for the disposition of said lands as shall be to the best interests of the State. The compensation of each commissioner was fixed at five dollars a day for each day engaged in the work of the Commission, together with necessary expenses.

Supplement to Act Approved April 11, 1864.

Approved March 31, 1869.

Laws of New Jersey, 1869, p. 1017.

This approves the exterior line as established in the report of the Commission, dated February 1, 1865, except so far as it extends in front of or over the lands of the Morris Canal and Banking Company, as granted by an act approved March 14, 1867. Every solid structure in the tide waters of the Hudson River, New York Bay and Kill von Kull beyond the bulkhead line, or lines of solid filling, is declared illegal and all piers built out to the pier head line, where such lines have been established, shall not exceed one hundred feet in width respectively, and shall not be built at less intervals between such piers than seventy-five feet, except where occupied and used as ferries; all piers must be erected on piles, or on blocks and bridges, so as to permit of a free flow or passage of water under, or through, them, and such blocks or bridges shall not occupy more than one-half the length of the pier.

The so-called WHARF ACT of March 18, 1851, is repealed, so far as it relates to the waters of the Hudson River, New York Bay and Kill von Kull. Provision, however, is made whereby any person or corporation, or his or its grantee, who had been authorized to fill in, or bulkhead, or otherwise improve lands under water through a grant from Legislature previous to the passage of this act could obtain a lease in perpetuity upon payment of an annual rental of three dollars per lineal foot, measured along the bulkhead line, or a grant upon payment of fifty dollars per lineal foot. Any lease may be con-

verted into a grant upon payment of the stipulated fee set forth above.

This supplement provided for the appointment of four Commissioners and included within their powers and duties all of those contained in the act to which this is a supplement, except in so far as they are modified by this supplement, and at the same rate of compensation as in the original act.

Provision was made for the sale of the riparian lands of the State, not already included in any grants or legislative acts, to fix the price therefor and to issue a grant in the name and under the great seal of the State, said conveyance to be subscribed by the Governor, and attested by the Attorney-General and Secretary of State. No grant or license, however, was to be made to any other than a riparian proprietor, until six calendar months after the said riparian proprietor had been personally notified in writing by the applicant for such grant or license, and had neglected to pay the price which the commission had fixed.

The moneys received from the sale and rentals of the said lands under water shall be first appropriated to the payment of such appropriations as the Legislature may authorize, then to the payment and liquidation of the State debt and afterwards the same shall be invested according to law and the interest paid annually to the Trustees of School Fund, to be appropriated by them afterwards towards the maintenance of the free schools.

The rights and interests of the State's grantee, if he be any other than the riparian owner, in the lands under water, must be quieted before the said grantee can fill or

improve the same. The Commission is given power to fix the compensation to be paid by the State's grantee to the riparian owner for these rights and interests (if he has any), and, if not satisfactory, to the riparian owner, he shall within twenty days appeal to the Supreme Court for a struck jury to try the question, the State bearing the costs of the trial in the event of the award being greater than that designated by the Commission.

A Further Supplement to Act Approved April 11, 1864.

Approved March 21, 1871.

Laws of New Jersey, 1871, p. 44.

Provides that *any* riparian owner may apply to the Commission for a license or conveyance of any lands under water in front of his lands and the same may be granted, upon payment of the compensation fixed by the Riparian Commission. Under this supplement only riparian owners may obtain a grant and a conveyance to any one else would be *ultra vires*.

An Act Relative to the Riparian Commission.

Approved April 6, 1871.

Laws of New Jersey, 1871, p. 113.

The act provides that the Riparian Commission may grant, or lease, first with a covenant to grant and grant afterwards such lands lying between what was at any

time, *heretofore,* the original high-water line and the exterior lines established by the Commission. The act also provides that each commissioner shall receive an annual salary of $1,500.

Supplement to the Act Approved April 11, 1864.

Approved April 4, 1872.

Laws of New Jersey, 1872, p. 99.

This supplement provides that the Riparian Commission may change, fix or establish any other lines than those now fixed and established for pier head lines, or lines for solid filling in the waters of New York Bay, or the Hudson River, or make any changes in any basins now fixed and established, or lay out and fix and establish any river basins in the said waters. After the maps showing the new lines, or basins, have been filed in the office of the Secretary of State, no encroachments beyond these lines shall be permitted. The Commissioners are authorized to make, for a satisfactory consideration, any leases or sales to the owners of property fronting on the said basin.

A Further Supplement to Act Approved April 11, 1864.

Approved March 27, 1874.

Laws of New Jersey, 1874, p. 103.

Confirms previous authority to execute leases or conveyances of land under tide water and provides that the

applicant shall pay the costs and that they shall be subscribed by the Governor and at least three of the Riparian Commissioners and attested by the Secretary of State.

A Further Supplement to Act Approved April 11, 1864.

Approved March 27, 1874.

Laws of New Jersey, 1874, p. 136.

Provides that where lands, which are now or ever have been under tide waters of this State and have been leased or granted by the State to any person, shall be taken by the company incorporated by an act, entitled "An act to incorporate a company to form artificial navigation between the waters of Newark Bay and New York Bay," approved March 13, 1866, the parties owning the grant or lease shall be compensated therefor, and provides for an appeal in case the award is not satisfactory.

A Further Supplement to Act Approved April 11, 1864.

Approved April 5, 1875.

Laws of New Jersey, 1875, p. 53.

This supplement provided that riparian owners applying for grants shall pay for the cost of surveys and maps, but was superseded by supplement approved April 17, 1888.

Supplement to Act Approved April 11, 1864.

Approved March 9, 1877.

Laws of New Jersey, 1877, p. 113.

Provides that where any right of way of any railroad, etc., is located along the shore line the riparian owner whose upland is separated thereby shall be held to be the riparian owner for the purpose of receiving any grant or lease from the State to lands under water.

Supplement to Act Approved April 11, 1864.

Approved April 20, 1885.

Laws of New Jersey, 1885, p. 257.

This Supplement provided that the Commissioners shall so arrange by agreement, or ballot, that the office of one of them shall be vacant every year for a period of four years, and that the Commissioners hereafter appointed shall hold office for terms of four years. Any vacancies shall be filled for the unexpired term only.

Supplement to Act Approved April 11, 1864.

Approved March 6, 1888.

Laws of New Jersey, 1888, p. 140.

Prohibits any grant or lease of lands under tide water, whereon there are natural oyster beds, except for the purpose of building wharves, bulkheads or piers.

Supplement to a Further Supplement Approved April 5, 1875.

Approved April 17, 1888.

Laws of New Jersey, 1888, p. 437.

The Riparian Commission may, at the request of the shore owners, extend their surveys over the tide waters of the State and prepare maps and have the same filed as provided by law. The commission is authorized to withhold an amount not to exceed five per centum of the total grants made to riparian owners from the school funds to meet the expenses of these surveys, as well as for salaries.

A Further Supplement to Act Approved April 11, 1864.

Approved April 19, 1889.

Laws of New Jersey, 1889, p. 322.

Provides that municipalities may obtain a grant or conveyance of the lands under water in front of public squares upon condition that such park shall be maintained as an open public square forever and that no buildings shall be erected on the park or lands under water which will obstruct the view or public access to the water. The consideration shall be one dollar, and, if any of the above conditions are violated, the grant shall be void.

A Further Supplement to Act Approved April 11, 1864.

Approved February 10, 1891.

Laws of New Jersey, 1891, p. 15.

Authorizes the Riparian Commission, after consultation with the Harbor Commission of the U. S. War Department, to establish exterior lines around or in front of all islands, reefs and shoals situated in the tidal waters of this State, beyond which no permanent structure or obstruction of any kind shall be maintained, as well as to establish lines for solid filling. The Commission is also authorized to sell or let to any applicant any of the lands under water and below mean high-water mark.

A Further Supplement to Act Approved April 11, 1864.

Approved March 20, 1891.

Laws of New Jersey, 1891, p. 213.

Provides that no dredging upon lands of the State lying under water, without a license from the Riparian Commission, shall be permitted except in the case of those owning riparian grants, who may dredge a channel from such grant to the main channel. The supplement also authorizes the leasing of any lands under water to any applicant, provided six months' notice has been given to the shore owner and said owner has failed to apply for and complete such lease or grant.

Amendment to Supplement Approved March 31, 1869.

Approved March 20, 1891.

Laws of New Jersey, 1891, p. 216.

Repeals Act of 1851 (Wharf Act) so far as it remained in force by the Supplement of March 31, 1869, but permits boards of freeholders to issue licenses under the WHARF ACT until July 1, 1891, but all reclamation or building under such licenses must be completed before January 1, 1892.

An Act to Reorganize the Board of Riparian Commissioners of the State.

Approved March 10, 1892.

Laws of New Jersey, 1892, p. 84.

This Act affects the constitution of the board by providing that the terms of the present board shall expire upon the appointment of four other commissioners and that the Governor shall be a member of the board. It also provides that the compensation and duties of the new board shall be the same as heretofore.

An Act to Reorganize the Board of Riparian Commissioners of the State.

Approved May 9, 1894.

Laws of New Jersey, 1894, p. 267.

Provides that the board shall consist of four commissioners appointed by the Governor who shall hold

office for five years; not more than two of whom shall be of the same political party; salary, duties and powers of the board to be as previously prescribed.

An Act to prohibit the riparian commissions from granting any special oyster rights or privileges in Delaware bay.

Approved May 15, 1894.

Laws of New Jersey, 1894, p. 309.

A Further Supplement to Act Approved April 11, 1864.

Approved February 19, 1895.

Laws of New Jersey, 1895, p. 88.

This Act is for the protection of the Palisades and provides that no grant or lease of the lands in front of the Palisades shall be made by the Riparian Commission for any purpose which will not preserve their uniformity and continuity.

An Act to Amend a Further Supplement Approved February 19, 1895.

Approved May 18, 1898.

Laws of New Jersey, 1898, p. 439.

Refers to granting or leasing lands under water in front of the Palisades.

Supplement to Supplement Approved April 19, 1889.

Approved March 7, 1901.

Laws of New Jersey, 1901, p. 54.

Permits a municipality which has secured, or intends to secure a grant of land in front of a public park to enter into a contract with the person or corporation owning the title to the fee of the soil embraced within the park or square, whereby the lands under water so granted to the municipality may be used for docking, berthing, loading or unloading vessels, but no structures erected for this purpose shall interrupt the view or public access to the water.

A Further Supplement to Act Approved April 11, 1864.

Approved March 22, 1901.

Laws of New Jersey, 1901, p. 374.

Any municipality may obtain a grant or conveyance of the lands under water within the limit of a public park or front of a street or public highway, provided the same is kept as a public park, or street, or highway for public recreation and resort, and that no structure be erected thereon inconsistent with such use. The consideration shall be nominal and the land so granted shall revert to the State in the event of the park or street being abandoned as such.

A Further Supplement to Act Approved April 11, 1864. Approved April 8, 1903.

Laws of New Jersey, 1903, p. 387.

Provides that where a municipality applies for lands under water in front of a public park, highway or street, the Riparian Commission may grant the same for the consideration to be charged therefor in the same manner as in the case of any other application. Repeals the nominal consideration clause of the supplement approved March 22, 1901. Further provides that no grant of lands under water in front of a public park or end of a public street shall be made to any one except the municipality.

A Further Supplement to Act Approved April 11, 1864. Approved April 6, 1906.

Laws of New Jersey, 1906, p. 124.

Directs the State Treasurer, on or before the first Thursday of January in each year, to transmit to the Riparian Commission a list of all leases of lands under water on which rentals are in arrears and unpaid for one year. It provides for re-entry upon such lands in certain cases and the re-granting of the said lands.

An Act to compel the determination of titles to riparian lands and lands under water in which the State claims an estate in remainder or reversion and to quiet the title to the same.

Approved April 12, 1907.

Laws of New Jersey, 1907, p. 96.

In order that the title to riparian lands or lands under water which have been granted to any person or cor-

poration in possession of such lands through lease or an estate for years may be definitely settled, the Court of Chancery is authorized, upon information of the Attorney General, to settle and determine such title.

An Act to authorize the construction and establishment of public docks and the shipping facilities connected therewith, and the purchasing and acquiring of riparian lands and rights and other lands and rights in lands necessary therefor or incident thereto, and for the regulation of the same in cities fronting on navigable waters of this State.

Approved October 21, 1907.

Laws of New Jersey, 1907, p. 686.

(See amendment approved March 12, 1913.)

Provides that where a municipality decides to erect or acquire public docks and shipping facilities, it may condemn any riparian rights held by individuals as provided by law, or may apply to the Riparian Commission for a grant of lands under water in front of any upland property. The grant shall not be made by the Commission unless three months' notice in writing shall be given to the upland owner, or published for thirty days in a newspaper of the said city, to the effect that if the said owner does not apply to and obtain from the Riparian Commission a grant for the said land within six months after the giving of the notice, such city will apply therefor. It is further provided that the city shall not have the right to sell or dispose of its grant, but if it ceases to use the same, it shall revert to the State.

A Supplement to Act Approved April 11, 1864.

Approved April 7, 1910.

Laws of New Jersey, 1910, p. 154.

Provides that no pipe line shall be laid upon the lands of the State lying under water without the consent of the Governor and Riparian Commission. The supplement, however, does not apply to the lands under the waters of the Atlantic Ocean.

Amendment to Act Approved October 21, 1907.

Title to read:

"An Act to authorize the construction, establishment and maintenance of public docks, warehouses and other structures, wharves, piers, bulkheads, slips, basins and shipping and transportation facilities, the acquisition of marsh lands and other lands, and rights in lands, riparian lands or lands under water, and for the regulation and use of the same in cities fronting on navigable waters of the state."

Approved March 12, 1913.

Laws of New Jersey, 1913, p. 107.

Section 1 requires that the municipal authorities shall prepare a plan or map showing the marsh lands or other lands, and the riparian lands and lands under water, which it is necessary to acquire to carry out the purposes of this act.

A Further Supplement to Act Approved April 11, 1864.

Approved April 8, 1914.

Laws of New Jersey, 1914, p. 237.

This supplement requires that every lease, or grant, to a municipality of riparian lands lying at the foot of any streets shall contain provision that the said lands are to be used for public purposes only, and the rental, or consideration, shall be fixed, having due regard to the fact that such lands are to be used for public purposes.

An Act to authorize the Riparian Commissioners of the State of New Jersey to grant lands of the State now or formerly under tide water to municipalities for streets and park purposes, and to impose terms upon such municipalities as conditions of such grant.

Approved April 17, 1914.

Laws of New Jersey, 1914, p. 474.

The act provides that the Riparian Commission may grant or lease to municipalities for public parks or streets such lands as are now or formerly were under water for consideration to be named by them. The grant may be for the entire bed or land now or formerly underneath the whole or any part of the waters of a branch, arm, lake, lesser channel or any subsidiary or auxiliary portion of any tidal water of the State. The Commission shall impose such terms upon the municipality, if needed, to protect the interests of other municipalities to insure additional flowage in the main portion of the stream.

A Further Supplement to Act Approved April 11, 1864.

Approved April 23, 1915.

Laws of New Jersey, 1915, p. 760.

Provides that the Riparian Commission, or their successors, are directed to authorize the use of state lands in front of any municipal development of docks and shipping facilities upon such terms as deemed proper, taking into consideration the public use to which said lands are to be devoted and the enhancement of the value of adjoining riparian lands by such development. They are authorized to rent said lands for a term of years with the option of the municipality to purchase in fee the same before the termination of such lease.

Riparian Lands and the School Fund

A Supplement to an act entitled "An act to establish a system of public instruction (Revision) approved March 27, 1874."

Approved April 24, 1894.

Laws of New Jersey, 1894, p. 123.

1. Provides that all State lands under water are irrevocably appropriated for the support of free schools in this State; all moneys received from the sale and rentals of such lands are to be held by the trustees of the school fund in trust.

2. Directs that all leases for lands under water are to be transferred to the trustees of the school fund to become a portion of the free public school fund.

Law Creating the New Jersey Harbor Commission

An act to create the New Jersey Harbor Commission and to define its powers and duties.

Approved April 8, 1914. Laws of New Jersey, 1914, p. 205.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. The Governor, with the advice and consent of the Senate, shall appoint five persons, not more than three of whom shall be of the same political party, residents of this State for at least five years previous to appointment, who shall constitute the New Jersey Harbor Commission. The terms of office of the persons first appointed by the Governor shall be so arranged and designated at the time of their appointment that the term of one member shall expire in five years, one in four years, one in three years, one in two years, and one in one year from the first day of April, nineteen hundred and fourteen. Annually thereafter the Governor, with the advice and consent of the Senate, shall appoint one member to serve a term of five years, as the term of any member previously appointed shall expire. Any vacancy occurring shall be filled for the unexpired term by the Governor, with the advice and consent of the Senate, and in all cases a member shall continue to serve until his successor is appointed and qualified. The members of this commission shall serve without compensation, except that they shall be paid the necessary expenses incurred in the performance of their duties.

2. The commission shall be provided with suitable office accommodations by the State House Commission, in the State House, or building adjacent thereto owned by the State, or may, with the permission of the State House Commission, rent suitable offices elsewhere for local purposes and furnish the same with the equipment necessary to conduct the business of the commission. The commission may employ a secretary and such engineers, clerks and assistants as it shall deem necessary, and fix their compensation; provided, however, that this power shall not bind the State of New Jersey to the payment of any sum or sums unless the same shall be included in any annual or supplemental appropriation bill. The secretary, engineers, clerks and assistants shall be deemed to be within the Civil Service of the State, subject to the provisions

of an act entitled "An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a Civil Service Commission and defining its powers and duties," approved April tenth, one thousand nine hundred and eight. The commission shall adopt a seal, and shall also adopt such rules, regulations and by-laws for the transaction of its business and the performance of its duties as may be necessary and advisable, and not inconsistent with this statute, with power to alter and amend the same from time to time as it shall become necessary or advisable so to do. The commission shall keep a record of all its proceedings, and such records, together with all maps, plans and specifications on file in its office, shall be open at all reasonable times to public inspection as public records.

3. It shall be the duty of the commission to investigate and report annually to the Legislature the condition of the water front or harbor facilities, and any other matter incident to the movement of commerce upon all navigable rivers and waters in this State, or bounding thereon, and to recommend to the Legislature and to the various municipalities of this State interested therein, such measures as may, in the judgment of the commission, be necessary or advisable for the preservation of proper navigation or its improvement, or the improvement of the movement of commerce upon such waters, and, concurrently with the Riparian Commission of this State, or any board or body which may succeed to the powers of said commission, the commission created by this act shall have power, by appropriate action in any court, to prevent encroachment or trespass upon the water front of any of the navigable waters of this State, and to compel the removal of any such encroachment or trespass, and to restrain, prevent and remove any construction, erection or accretion injurious to the flow of any such waters which may be detrimental to the proper navigation thereof, and the maintenance and improvement of commerce thereon.

4. All plans for the development of any water front upon any navigable water or stream of this State, or bounding thereon, which is contemplated by any person, corporation or municipality, in the nature of individual improvement or development, or as a part of a general plan which involves the construction, change, alteration or modification of a dock, wharf, pier, bulkhead, bridge, pipe line, cable, or any other similar or dissimilar water front development, to be undertaken subsequent to the passage of this act, shall first be submitted to the said commission, and no such develop-

ment or improvement enumerated within the provisions of this section, or included within a proper interpretation thereof, shall be commenced or executed without the approval of this commission first had and received, or as hereinafter provided. Upon the presentation of plans for any such improvement, the commission shall forthwith consider the same, and shall, if necessary or desirable, hold public meetings for the consideration thereof, under such rules and regulations as the commission may establish. Before any plans are approved or disapproved, the commission shall have power, except as hereinafter provided, to direct such changes or alterations in the plans submitted as it may deem necessary or advisable, as a condition precedent to approval. Where such water front is under the control of any local board, commission or other governing body, created by an act of the Legislature, now or hereafter, having power to improve or develop the water front or exercising such authority that a permit or license must be granted by it before any improvement or development may be commenced, plans proposed by it or submitted to it shall be filed with the commission created under this act. The said commission created under this act may, within ten days after the receipt by it of plans as above provided, file notice of objections to the carrying out of such improvement or development, or to the granting of such permit or license by the local board, commission or other governing body, and the filing of such notice shall act as a stay in the carrying out of such plans or in the granting of such permit or license until a public hearing shall have been held by the local board, commission or other governing body, sitting jointly with the commission created under this act. At such public hearing the commission created under this act may state its objections to the plans and recommend such changes, modifications or alterations as it deems necessary. The local board, commission or other governing body together with the commission created under this act shall then either approve or disapprove the plans, or grant or refuse to grant the permit or license as in their judgment seems necessary or desirable. Any development or improvement enumerated within the provisions of this section, or included within a proper interpretation thereof, which shall have been commenced or executed without first obtaining approval as provided in this section, shall be deemed to be a purpresture and a public nuisance and shall be abated in the name of the State of New Jersey in such action as shall be appropriated for that purpose; provided, however, this section shall not apply to, or affect, any development for docks, shipping and transportation facilities heretofore inaugurated by a

municipality, which is under construction in whole or in part, if such municipality has, prior to the passage of this act, filed with the Secretary of State a map showing the lands proposed to be taken for such municipal development.

5. Any county, town, township, borough, city, or other political subdivision of this State, may request the said commission to prepare and propose for such municipality a proper plan for the development and improvement of its water front upon any navigable stream, river or waters of this State, or bounding thereon, and it shall be the duty of the said commission to prepare and submit such plan or plans for the improvement and development of the water front of such municipality, the navigation of the waters incident thereto, and the regulation and improvement of the traffic of commerce incident thereto. The said commission for the preparation and submission of such plans may make such charge against the municipality requesting the same as is equal to the actual cost of the preparation of such plans of improvement, and the municipality requesting the same is hereby authorized to pay the same from any funds in the treasury of the said municipality.

6. When the commission shall be constituted in accordance with the provision of this act, the commissioners appointed pursuant to the provisions of Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven,[1] shall deliver to this commission all maps, plans and other data and information in its possession, and the terms of office of the members of the commission created pursuant to said Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven, shall thereupon terminate and cease, and the commission appointed under the provisions of this act shall also continue such work as the former commission was authorized to perform. The commission appointed under the provisions of this act shall carry out such contracts as have been made by the said commission appointed pursuant to the provisions of Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven, and any unexpended moneys in the State Treasury appropriated for the use of the commission appointed pursuant to the provisions of Joint Resolution No. 3, approved March twenty-ninth, one thousand nine hundred and eleven, shall be placed to the credit of any for the use of the commission appointed under the provisions of this act.

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[1] See pp. 104-105.

7. The sum of twenty-five thousand dollars is hereby appropriated for the uses and purposes of the said commission, pursuant to the provisions of this act, when included in whole or in part in any annual or supplemental appropriation bill.

8. Nothing herein contained shall be construed to deprive the Board of Riparian Commissioners or their lawful successors of the jurisdiction, power and authority conferred upon it or them by the laws of this State, but the powers conferred by this statute upon the commission hereby constituted shall be co-ordinate therewith and in addition thereto.

9. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately; provided, however, that if any section or parts thereof of this act shall be questioned in any court, and shall be held to be unconstitutional and void, the sections or parts thereof so declared to be invalid shall be exscinded and the balance of the act shall stand as though said sections or parts thereof had never been included within the provisions of this act.

Laws Relating to New Jersey Ship Canal Commission

Joint Resolution No. 8.

Approved April 24, 1911. Laws of New Jersey, 1911, p. 846.

Be it Resolved by the Senate and General Assembly of the State of New Jersey:

1. The Governor is hereby authorized to appoint five persons to constitute "The New Jersey Ship Canal Commission," who shall hold their office for three years, and who shall serve without compensation, either for services or expenses, and such clerical assistants as they may see fit to employ shall be at their own expense.

2. The duty of the said commission shall be to examine the plan and route of the proposed canal across the State of New Jersey connecting New York bay with deep water in the Delaware river at Bordentown; to discover the amount of land necessary to be acquired for the right-of-way of the said canal, and determine as nearly as possible, the cost of acquiring the same; to consider and determine the location of, and plans for, terminals, railroad connections and stations along the line of the said canal, and the arrangement of transportation facilities in connection therewith; to determine generally upon a plan of development at the terminals and along the line of the said canal, and the advisability of the acquisition thereof by the State, so that, in the construction and operation of said canal, the greatest possible benefit will result to the people of the State at large. The investigations, recommendations and plans determined upon by the said commission shall be reported to the next Legislature for the information and guidance thereof.

2. This joint resolution shall take effect immediately.

An Act making appropriation for the extension of the government survey and the erection of monuments for the permanent location thereof on the route of the ship canal across the State of New Jersey, and for other incidental expenses in connection therewith.

Approved March 25, 1912. Laws of New Jersey, 1912, p. 212.

Whereas, by Joint Resolution No. 8, approved April twenty-fourth, nineteen hundred and eleven, the Governor was authorized

to appoint five persons to constitute the New Jersey Ship Canal Commission, whose duty it should be to examine the plan and route of the proposed canal across the State of New Jersey, connecting New York bay with deep water in the Delaware River at Bordentown, to discover the right of way of the said canal, and determine other facts in connection therewith; and

WHEREAS, the report of the said Commission has been filed with the Legislature, and it is necessary and advisable that the survey heretofore made by the Federal Government shall be extended, and that monuments shall be erected along the line of the said survey, so that the location thereof may not be lost;

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The sum of twenty-five thousand dollars is hereby appropriated to be used by the commission appointed under Joint Resolution No. 8, approved April twenty-fourth, nineteen hundred and eleven, and known as the New Jersey Ship Canal Commission, to be expended in the extension of the United States Government surveys for a ship canal across the State of New Jersey, and for the erection of monuments for the permanent location thereof to ascertain the description of the lands and their owners, and for such other necessary expenses as in the performance of the duty for which it was constituted the said commission shall order.

2. The sum of money hereby appropriated shall be expended, when included in any annual or supplemental appropriation bill, in whole or in part to the extent appropriated, upon the approval of the president and the secretary of the said commission.

3. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

An Act to consolidate with the New Jersey Harbor Commission the New Jersey Ship Canal Commission.

Approved April 17, 1914. Laws of New Jersey, 1914, p. 522.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The New Jersey Ship Canal Commission is hereby merged into and consolidated with the New Jersey Harbor Commission.

2. The New Jersey Harbor Commission shall succeed to and exercise all the powers and perform all the duties now exer-

cised and performed by or conferred and charged upon the New Jersey Ship Canal Commission.

3. The powers and duties of the New Jersey Ship Canal Commission shall be deemed for the purpose of this act to continue throughout the life of the New Jersey Harbor Commission, notwithstanding the expiration of the period of time for which such New Jersey Ship Canal Commission was created.

4. All offices existing under and by virtue of the acts and resolutions creating the New Jersey Ship Canal Commission shall end on the thirtieth day of June, one thousand nine hundred and fourteen.

5. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, and this act shall take effect on the thirtieth day of June, one thousand nine hundred and fourteen.

Law Creating the Pilot Commission

An Act to regulate the use of power vessels and boats navigating the waters within the jurisdiction of this State above tide water, and to provide for the inspection and licensing of power vessels, their masters, pilots and engineers.

Approved April 9, 1906.

Laws of New Jersey, 1906, p. 134.

The act provides for the appointment by the Governor for terms of three years of a chief inspector and one assistant inspector of power vessels, the former at a salary of six hundred dollars per year and the latter to receive ten dollars a day for each day of actual service together with their necessary expenses which are to be "duly audited by the Governor." It is provided that these inspectors shall have two years' experience as licensed masters, pilots or engineers. The act provides the dutes of the inspectors, the obligations placed upon owners of vessels engaged in carrying passengers or freight for hire or towing for hire. It lays down "Rules of the Road" and penalties for violating the regulations adopted by the chief inspector.

Supplement to Act of April 6, 1906.

Approved March 11, 1910.

Laws of New Jersey, 1910, p. 17.

This supplement provides that the registration of vessels licensed to carry passengers shall be renewed annually; also that the chief inspector shall maintain an office at or near Lake Hopatcong.

Laws Relating to the Department of Inland Waterways

An Act to establish a Department of Inland Waterways.

Approved March 17, 1908.

Laws of New Jersey, 1908, p. 28.

The act authorizes the establishment of a Department of Inland Waterways; to consist of a Commissioner of Inland Waterways, to be appointed by the Governor for a term of five years at an annual salary of two thousand dollars, and such clerical assistants as may be necessary; the said assistants to be appointed by the Commissioner subject to the approval of the Governor. The duties and powers of the Department are as follows:

(1) To investigate and report annually to the Governor the routes of existing inland waterways of the State, their depth and use by business, or pleasure craft and the advisability and possibility of increasing the use thereof, either by extension or improvement.

(2) To recommend the construction of such additional waterways as are best calculated to promote the interests of the people of this State.

(3) To make, or have made, such surveys as may hereafter be authorized.

(4) To maintain, improve and repair the existing inland waterways of this State; to construct and maintain such additional waterways as may be authorized; to make and enforce proper rules and regulations for the use of the same.

Supplement to Act approved March 17, 1908.

Approved April 16, 1909.

Laws of New Jersey, 1909, p. 207.

Gives the Commissioner of Inland Waterways specific authority to appoint Harbor Masters in any locality where the inland waterway may be constructed when, in his discretion, such shall be necessary. The term of office shall be one year and appointee to serve without compensation.

An Act making appropriation for the purpose of marking the channel of the inland waterway along the Atlantic coast from Cape May to Bay Head, and the waters connecting therewith and adjacent thereto.

Approved April 6, 1911.

Laws of New Jersey, 1911, p. 154.

See amendment approved April 1, 1912.

Authorized the Commissioner of Inland Waterways to properly mark by stakes, buoys and lights, the channels of the inland waterways and appropriates $1,500 for the work, when the same is included in any annual supplemental bill.

An Act amending the Act approved April 6, 1911.

Approved April 1, 1912.

Laws of New Jersey, 1912, p. 526.

Increases the amount appropriated for marking the channel of the inland waterway to $3,500, when this sum is included in the annual or supplemental appropriation bill.

An Act authorizing the construction of an inland waterway extending from Cape May to Bay Head along the Atlantic Coast, and making an appropriation therefor.

Approved April 6, 1908.

Laws of New Jersey, 1908, p. 126.

(See supplements and amendments as adopted.)

Provides an appropriation of $300,000 for the project, but only as much of this sum shall be expended each year as may be included in the annual or supplemental appropriation bill.

Supplement to Act approved April 6, 1908.

Approved March 8, 1912.

Laws of New Jersey, 1912, p. 52.

Makes an additional appropriation of $300,000 for the completion of the inland waterway from Cape May to Bay Head and $25,000 for maintenance, in such amounts as shall be included in any annual or supplemental appropriation bill.

Supplement to Act approved April 6, 1908.

Approved May 13, 1912.

Laws of New Jersey, 1912, p. 934.

Authorizes the Commissioner of Inland Waterways to make such variations in the plan originally adopted for the inland waterways from Cape May to Bay Head as he may think advisable, or to the interests of the State, such changes to be subject to the approval of the Governor.

An Act authorizing the construction of a waterway connecting Barnegat bay and Manasquan inlet, and making an appropriation therefor.

Approved April 24, 1911.

Laws of New Jersey, 1911, p. 446.

See amendment approved April 17, 1914.

This act provides an appropriation of $150,000 for the project, but only such sums are to be expended each year as may be included in the annual or supplemental appropriation bill.

An Act amending the Act approved April 24, 1911.

Approved April 17, 1914.

Laws of New Jersey, 1914, p. 472.

Permits a change in the route adopted by the original act for the waterway between Barnegat bay and Manasquan inlet when such change is advisable, or to the best interests of the State, and gives the Department of Inland Waterways authority to acquire a right of way.

An Act providing for the development of the inland waterways system by deepening the channel of Absecon Inlet by the erection of a jetty or other structure and to appropriate $50,000 for this purpose.

Approved March 8, 1912.

Laws of New Jersey, 1912, p. 82.

See amendment approved April 9, 1913.

This project is conditional upon the city of Atlantic City appropriating a like amount to complete the work.

Act amending Act approved March 8, 1912.

Approved April 9, 1913.

Laws of New Jersey, 1913, p. 615.

Permits the work of improving Absecon Inlet to be done by a jetty or other structure as originally proposed and by dredging. The amendment also eliminates any specified depth to be obtained.

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BULLETIN OF INFORMATION
RE
THE INLAND WATERWAYS CORPORATION

The beginning of the inland water transportation facilities now operated by the Inland Waterways Corporation, is directly traceable to "World War" emergency. Due to unprecedented demands for transportation to supply our troops overseas, congestion of the railroads actually existed to an alarming degree and an auxiliary transportation agency, a fleet of barges, was established to relieve the situation. There is a question as to the responsibility for the congestion then existing. Rail proponents claim that there were plenty of cars in service but that they were "frozen" at the ports because of lack of ocean transportation. Water proponents claim that this congestion arose from the failure of the Government in the past to properly complete and utilize its navigable streams so that shipping would not necessarily have been confined to relatively few ports.

During the War this emergency transportation agency, i. e., a hastily gathered together fleet of ill-assorted towboats and barges, was operated primarily with but one object in view, to win the War without reference to cost. After the War all boats and barges then in existence and which had been operated under the Railroad Administration were turned over to the Secretary of War with a mandate to carry out the policy of Congress announced in the Transportation Act of 1920, which was to encourage and develop water transportation on our inland streams and lakes and at the same time to promote and preserve in full vigor both rail and water transportation. Various duties were prescribed for the Secretary of War by this same Act with the object of making this policy effective. Accordingly the Secretary of War created the Inland and Coastwise Waterways Service as a separate branch of the War Department to carry out the expressed desire of Congress. The Inland and Coastwise Waterways Service operated at a loss of approximately $1,000,000.00 a year during the time of its existence. The reasons for its failure were not hard to find. First of all, it was operated under such Governmental restrictions as to vitiate the purpose of its creation.

By certain laws the Inland and Coastwise Waterways Service was required to do certain things and by other laws was prohibited from carrying out its fundamental purpose. Accordingly the people were hesitant to place their faith in this unproven experiment. They refused to take advantage of the savings offered by this service because there was no assurance that Congress would continue to appropriate the necessary funds for its operation every year. There was no assurance as to how or to whom the Government would dispose of this agency if Congress decided to abandon it. Consequently it was only natural that shippers should look askance at any invitation to abandon a permanent and long established transportation system, for it is generally known that traffic and freight move only in well-worn, time-proven grooves.

There was a strong and determined effort at the time the Inland and Coastwise Waterways Service was established to get the Government out of business. The railroads themselves in the early days of their existence had used every means at their disposal to throttle water transportation.

That they succeeded is evidenced by the fact that from 1900 to 1917 common carriers upon our inland streams were practically nonexistent. After the Governmentally operated Inland and Coastwise Waterways Service was created, and had been in operation nearly four years, there was a strong protest all over the country against spending any more money upon an almost universally acknowledged failure. From the people of the interior a wave of protest went up that they were being taxed for the benefit of the fortunate few located upon our rivers. From the railroads went up the cry that they were being unjustly taxed for the creation of a competitive agency primarily destined to hurt them. There was a reluctance on the part of Congress to invest further in the project which had not only shown no results but which was further costing $1,000,000.00 a year. Congress, and the public, was beginning to believe that the hundreds of millions of dollars already expended to make waterways navigable was money wasted because there were no private agencies taking advantage of them. They also looked with doubt upon a Governmental demonstration which continued going into debt every year. In view of the ignorance of the public concerning the real facts, this Congressional attitude was both justifiable and understandable. The underlying causes of the failure of water transportation had been carefully misstated by the persons most interested in destroying it.

Handicapped by stringent restrictions it was not to be wondered at that the Inland and Coastwise Waterways Service proved a business failure. Nevertheless it justified its existence because it determined that certain fundamental conditions must exist before our navigable streams could be utilized for the benefit of the people at large. It ferreted out and brought to light the hidden causes of the nonexistence of common carriers on our inland waterways.

The prerequisites of successful water transportation by common carriers were gradually determined to be as follows:

1. Navigable streams. This first prerequisite of successful water transportation is self-evident. If no common carriers were able to operate upon the streams they would be of no value to the country as a whole.

2. Suitable equipment to operate upon these streams. Through processes of experimentation and gradual evolution the railroads were enabled to determine and develop standard equipment. Unfortunately there is as yet no system of standard depths or widths for our streams and canals. There is no question as to the eventual standardization of our main arterial waterways to a navigable depth of nine feet and the development of their tributaries in the order of their importance, and outward from the main streams, with channels of either nine feet or six feet. At the present time, the Government of the United States is committed to a very complete and comprehensive system for gradually obtaining the desired standardization of our navigable waterways. As a general policy the present administration favors modernizing of every part of our waterways which will show economic justification in aid of our farmers and industries, building these waterways as one would build any other transportation system - that is, by extending its ramifications solidly outward from the main trunk lines. Substantial traffic or public service cannot be developed upon a patchwork of disconnected local

improvements and intermediate segments. Such patchwork has in past years been the sink of hundreds of millions of public money.

In the absence of immediate standardization of our navigable waterways we have been faced with several problems. First, we had to design a towboat to operate most efficiently upon streams from four to six feet deep, one to operate upon streams from six to eight feet, and one to operate upon streams of eight feet or over. At the present time our barges are designed to carry a suitable cargo upon a six-foot channel and double that cargo upon a nine-foot one. To illustrate how this new equipment will operate, let us suppose that we start up the Lower Mississippi from New Orleans to St. Louis with our barges carrying 2,000 tons apiece. When we reach St. Louis we would drop 1,000 tons shipped to that place and continue our tow on the Upper Mississippi with the same barges carrying a load of 1,000 tons shipped to St. Paul, for example, with a towboat properly designed to operate on a six-foot channel. This eliminates the necessity of transferring cargo from a barge designed to operate upon a nine-foot channel to a barge designed to operate on a six-foot channel. We are justified in designing types of towboats for different channels because the life of these boats will have been long since gone before we achieve the contemplated standardization of our waterways.

3. Suitable Terminals. Local conditions upon each river and each channel must determine what the terminal facilities for that particular stream must be. In general, our experience has shown that there are three suitable types of terminals. First, the direct lift; second, the conveyor type; and third, floating terminal with incline. The type of terminal depends upon the character of the stream, commodities to be handled, and whether or not there is to be interchange of freight with the railroads at the terminal point.

4. Balanced Freight Upon These Streams. By balanced freight is meant the movement of freight both up and down stream and the carrying of freight of both high and low revenue.

5. Interchange of Freight. The railroads could exist and function very profitably without water transportation but water transportation, benefiting all the people, cannot exist without the cooperation of the railroads. If there is no interchange of freight between the railroads and the water carriers the inherent cheapness and advantage of water transportation is limited to the select few located upon the banks of our navigable waterways.

6. An equitable division of revenue between the water carrier and the connecting railroads. The most difficult question now confronting the Inland Waterways Corporation is the adjustment of rates between the railroads and the Barge Line so as to provide an equitable living revenue for both parties. Logically this division of revenue should be determined by the two parties involved and based upon the actual service performed. There is no ideal method of determining how the resulting revenue of a rail-water-rail movement should be distributed amongst the participating carriers. The Inland Waterways Corporation believes that the fairest possible basis

for determining what constitutes an equitable division of revenue for service performed should be a first class rate-pro-rate basis. This basis for determining the division of accruing revenue was taken because a first class rate is assumed to give all carriers a living revenue and a justifiable profit for service performed. To illustrate how a first class rate-pro-rate basis is used to determine an equitable division of accruing revenue of a rail-water-rail movement let us take a hypothetical case. Suppose a shipment is to be made from its origin over Railroad "A" to the Barge Line and from the Barge Line over Railroad "B" to its destination, and the first class rate of Railroad "A" for the distance it carries the shipment is $4.00, and the first class water rate for the distance the Barge Line carries the shipment is $2.00, and the first class rail rate of Railroad "B" for the distance it transports the shipment is $3.00, then we would add the total of the first class rates of the three participating carriers for the distance the shipment was transported, i. e., $9.00. Assuming that $8.00 represents the arbitrary figure set by the Interstate Commerce Commission as the joint rail-water-rail rate for the shipment, the proportion of this total revenue to which Railroad "A" is entitled would be 4/9ths of 8, and the proportion of the total revenue to which the water carrier is entitled would be 2/9ths of 8, and the proportion of the total revenue to which Railroad "B" is entitled would be 3/9ths of 8. However, in a general discussion of the Inland Waterways Corporation, this would be beside the point, for the public is only interested in what the savings of an all-water, rail-water, rail-water-rail or water-rail-water movement will be over an all-rail movement, and not in divisions, other than to see that each participating carrier gets a living revenue.

At the present time, however, this Corporation has interchange relations with 162 railroads, including among them the most powerful and the most far-sighted. It is the history of transportation that an increase of facilities and the cheapening of transportation increase the volume of traffic. Fortunately in certain cases where short-sighted railroads refuse to extend the advantages of joint rail and water transportation to the people of the United States there exists a tribunal of law before which the facts can be argued. If this tribunal finds that the facts justify such a course of action it can force these railroads to extend their lines to meet the Barge Line and to compel them to equitably distribute the resulting revenue upon the basis of actual service performed.

At the present time the rate system throughout the United States is so technical and so involved that it follows no guiding principle in its entirety. The Interstate Commerce Commission does not make a blanket decision covering the whole frame of rate structure, but, at the request of one of the interested parties who believes that the existing rates are unjust and unfair, may consider each individual case and where such individual case is presented for arbitration to the Interstate Commerce Commission the burden of proof to show that the existing interchange relations or joint rates are unjust shall fall upon the party bringing the complaint. By law the Interstate Commerce Commission can force either the railroad or the Barge Line or both to extend their lines to meet one another. It has been customary, however, for the Interstate Commerce Commission to require the Barge Line to lay down a track or tracks from its terminal to the right-of-way of the railroad and to require such railroad to put in connecting

switches and to cooperate with the Barge Line in rail-water and water-rail movements and divisions of accruing revenue.

Accordingly in order to determine whether or not any further expenditures upon our inland waterways were justifiable Congress created a pioneer experimental agency free from the red tape that so handicapped the Inland and Coastwise Waterways Service. This pioneer agency, known as the Inland Waterways Corporation, was organized like a modern railroad. The underlying thought behind its creation was to determine once and for all whether successful water transportation with its resultant benefits and savings to the people at large would be practicable or not. Organized as a business agency, endowed by the United States and given the same privileges as any private corporation, including the ability to borrow money, the Inland Waterways Corporation was cast loose to sink or swim by its own efforts. That it has swum lustily is evidenced by the fact that during the five years of its existence it has changed the loss of $1,000,000.00 a year into an average net income of $82,000.00 a year. The reason this net income is not larger is because the Corporation is required by law to operate upon the Upper Mississippi and Warrior Rivers where the required conditions for successful operation of common carriers are not yet present. The establishment of any successful business by a transportation system invariably results in a loss until the transportation agency can get both feet upon the ground. In the case of the Upper Mississippi, the Federal Barge Line service has just been established. The conditions of the channel, the lack of suitable equipment and terminals have to a large extent eaten up the profits of the Lower Mississippi where the six required conditions of success are permanently established. On the Warrior River all freight destined for Birmingham is required to go through one terminal at Birmingsport, a small town about 19 miles away from Birmingham. The only connection between the banks of the Warrior River and Birmingham, where other railroads compete for interchange relations with the Barge Line, is over one railroad that was owned by the Ensley Southern up until 1926. This railroad was operated by the Ensley Southern at a loss and it was enabled upon that plea, to the Interstate Commerce Commission, to extract such a large percentage, out of all proportion to the actual service performed, of the accruing revenue for a joint rail and barge haul as to render service over this route a losing proposition for the Barge Line. Consequently, operations upon the Warrior River were also paid for by the profits of the Lower Mississippi. In 1926 the Southern Railroad claimed that the Ensley Southern was a nonpaying line, threw it into the hands of a receiver and finally asked for its abandonment. This was not approved by the Court but it was ordered sold for $500,000.00, and it was bought on May 1, 1926 by the Warrior River Terminal Company, the entire stock of which is owned by the Inland Waterways Corporation.

The Warrior River Terminal Company is an Alabama Corporation, of which the Chairman and Executive of the Inland Waterways Corporation is the President, and is the only connection between the Warrior and the interior of Alabama. Since its purchase in 1926 this railroad has been reorganized, rebuilt and enlarged until in 1928 it showed a net operating income of $30,886.98 in excess of six percent on the value of the property of the Warrior River Terminal Company. It is extremely gratifying to have the efficiency of the Inland Waterways Corporation demonstrated to such a degree in the successful operation of a railroad abandoned as nonpaying by

a large railroad. In the past few years the losses upon the Warrior River have been so reduced that it is confidently anticipated in the near future that this river will be placed upon a paying basis.

Owned by the people of the United States and governed by the Secretary of War, with a permanent executive, this Corporation is extending to all the people of the United States the benefit of cheaper water transportation as well as reviving common carriers upon our lakes and streams by establishing favorable conditions for the investment of private capital. Originally created and capitalized at $5,000,000.00 in 1924 the Inland Waterways Corporation was expanded in 1928 with an additional capitalization of $10,000,000.00 appropriated that year.

The underlying principle upon which this Corporation operates is that every man in the United States who has been taxed to make our inland waterways navigable is entitled to the same benefit and the same saving in their use whether he be located on the banks of the streams or in the heart of the interior. To illustrate, suppose that the all-rail rate from St. Louis to New Orleans were $5.00, and the all-water rate between the same two points were $4.00, the saving the man located at St. Louis would make while using the Mississippi River to ship his goods to New Orleans would be $1.00. Suppose a man located at Springfield, an interior town desires to ship from Springfield to New Orleans and the all-rail rate from Springfield to New Orleans is $6.00. The Inland Waterways Corporation by arrangement with the railroads would establish a joint rail-water route, rail from Springfield to St. Louis, water from St. Louis to New Orleans, of $5.00, this rate being fixed by deducting from the all-rail rate between Springfield and New Orleans the savings of the water route over the rail route between St. Louis and New Orleans, which is the distance the water route is used. Thus it is evident that although the man at Springfield is not located on the river he nevertheless gets the same savings in cents per hundred pounds for the distance the river is used as the man located at New Orleans.

When this principle was first enunciated the people located on the rivers protested that they were being robbed of the advantages of their location. They desired to hold cheaper river transportation as a club over the heads of the railroads paralleling the river routes in order to secure lower rates. The railroads themselves protested that water transportation would take the freight away from them. The inherent justice of the principle enunciated by this Corporation finally made it self-evident and, paradoxical as it may seem, water transportation hurts the railroads to help them. To illustrate, what the water carriers take away from the railroads in freight they more than give back in finished commodities and increased demands. To be specific, the Pennsylvania Railroad in competition with water transportation upon the Monongahela River has had to expand its facilities paralleling the river four times. The reasons for this were as follows: First, manufacturers settled in Pittsburgh because raw materials could be received and distributed cheaper than some place else. As Pittsburgh grew the people demanded necessities, comforts and luxuries in the order named, and the raw materials shipped into Pittsburgh taxed the capacity of the river and the distribution of the finished products and the demands of the increased population necessitated several expansions of the railroads.

To be brief, the Inland Waterways Corporation extends the benefits of cheaper water transportation to every one including the railroads. The shippers effect a saving in their distribution cost which enables them to pay the farmers a higher price for their commodities and which enables the latter to distribute their products in times of depression. The people of the United States are receiving real tangible benefits from the money they have been taxed to make waterways navigable and even the railroads receive much freight which would not otherwise move if the cost of transportation and distribution were any higher.

It is contended by opponents of water transportation that there is sufficient rail transportation available to take care of the growing needs of our country. However, past experience has shown us that every 10 years the transportation needs of this country have practically doubled. To meet the increased demands 12 years hence would cost the railroads ten billion dollars. The total amount invested in water transportation is slightly less than one billion dollars. The increased expenses of a railroad expansion would of necessity have to be paid for by the public through the medium of increased cost of transportation and freight. The Inland Waterways Corporation freely admits that if there is not sufficient demands for transportation to furnish both railroads and waterways with a living revenue then the time has not yet come for the development of water transportation in that locality. However, experience has proven that the demand for transportation is greater than the facilities available and that this demand is continually increasing. Remember it is extremely difficult to serve in a dual capacity, i. e., to encourage and promote the development of water transportation with its resulting decrease in shipping costs and benefits to the public and at the same time to preserve in full vigor both rail and water transportation. That this Corporation has succeeded in both roles is becoming more evident day by day.

For the general information of the public at large and in the belief that they will be interested in how water transportation by the Federal Barge Line may be inaugurated upon one of our inland streams, the following information is submitted: They must first get Congress to authorize a survey of their project before any money or time can be devoted to the creation or maintenance of any particular navigable channel. This survey covers the question of practicability and potential tonnage and when such survey is completed by the Corps of Engineers it is submitted to Congress with a recommendation as to whether the project should be undertaken. If Congress approves the recommendation of the Chief of Engineers and the Secretary of War that such work should be undertaken, the proposed undertaking then becomes one of the "Adopted Projects" of the Government and is executed as funds become available from the general appropriation for rivers and harbors. When the Chief of Engineers reports to the Secretary of War that any tributary or connecting waterway of the Mississippi River, not including the Ohio River, is navigable or will have been made navigable within two years, the Secretary of War is authorized to have a survey made of this waterway to determine the practicability of barge line service thereon, to determine the type of equipment, freight, traffic and terminals that will be required and the amount of business that may be expected if barge line service is placed upon that waterway. In this survey will be included the determination of what joint rail and water connections are advisable and

and what tariffs and distribution of revenue are necessary. When this channel is suitable for the safe and efficient operation of the water carrier and when the traffic survey indicates that the establishment of the barge line upon this waterway is in the public interest, the Secretary of War is authorized to begin such barge line service, as soon as the Corporation has the necessary equipment and facilities to operate thereon. Note particularly that references are made to a connecting waterway or tributary of the Mississippi River except the Ohio River, which excludes operations upon any tributary of the Ohio, such as the Tennessee. This particular reference was made because under the present law the Inland Waterways Corporation is prohibited from operating upon the Ohio River or any inland waterway that does not connect with or is not a tributary of the Mississippi.

Owing to the limited sphere of its activities the Inland Waterways Corporation can not possibly extend to all of the people its full benefits. Through public demand, however, separate bills extending the sphere of its operations have been introduced in Congress, and the question of such extensions will be there determined.

It is deemed advisable at this time to inform the public as to the distinction and the line of demarcation between the Corps of Engineers and the Inland Waterways Corporation. To be brief, the Corps of Engineers is charged with the construction and maintenance of our rivers and harbors; the Inland Waterways Corporation with all operations of the Federal Barge Line thereon. The two provinces do not in anyway over-lap.

The organization of the Inland Waterways Corporation is as follows: The stockholders of the organization are the people of the United States. The incorporator and governor thereof is the Secretary of War who operates this Corporation through a permanent official known as the Chairman of the Board of the Inland Waterways Corporation and Executive of the Corporation. The Advisory Board, consisting of six prominent business men selected from sections of the country through which the Inland Waterways Corporation operates, are, as their name indicates, advisory only. They make such recommendations to the Chairman and to the Secretary of War as they deem advisable for the best interests of the country. Their recommendations, however, are not required to be accepted. In addition to the Chairman and Executive there is an Assistant to the Chairman and a General Counsel. Their duties are as their names indicate. Then there is a Secretary and Treasurer under whom operate a Comptroller and an Assistant Treasurer.

There are four operating organizations of this Corporation, the Upper Mississippi, the Lower Mississippi, the Warrior, (each of which has its own Operating Manager) and the Warrior River Terminal Company, under a General Manager. This latter is an Alabama Corporation, with a President, Vice President and Board of Directors.

The Secretary and Treasurer of the Inland Waterways Corporation performs all his duties under the direction and supervision of the Chairman. He is the accountable officer for all funds and securities of the Corporation. It is his duty to collect, receive and hold all money, bonds,

certificates of stock, etc. He has the power to affix and attest the seal of the Corporation wherever it is required. He is also responsible for the general accounting policy of the Corporation. The Operating Manager of each Division coordinates the activities of all Departments in his Division. He is also charged with the operation, maintenance, and repair of terminals, and all transportation facilities except those properly coming under the duties of the Chief Engineer. In addition, he supervises freight movements and tow schedules, employs, discharges, and superintends boat personnel. The Traffic Manager is in charge of the commercial relations between the services operated by the Inland Waterways Corporation and other carriers, of the fixing of rates and divisions, and the routing of traffic. He also prepares the data for the submission of cases to the Interstate Commerce Commission by the General Counsel.

The Traffic Manager in Charge of Solicitation is in charge of the solicitation of business for the Corporation and of the supervision of general agents, foreign agents and commercial agents. The Chief Engineer is charged with the preparation of designs, plans, specifications and inspection of floating equipment and terminals the proposed construction of which is undertaken by the Inland Waterways Corporation or any of its subsidiaries, also with maintenance and repair of floating equipment. He confers with outside agencies engaged in the construction of any equipment designed for use by the Inland Waterways Corporation. The General Purchasing Agent, as his name indicates, coordinates all purchases made by the Corporation. The Comptroller accounts to the Secretary and Treasurer for all income and disbursements pertaining to the divisions operated by the Corporation. He operates under the Secretary and Treasurer and is responsible for the correctness of all operating accounts. The Radio Supervisor and the Board of Directors for the Warrior River Terminal Company are as their names indicate. Recently, there has been added an Industrial Relations Manager whose duties are to gain and keep contact between the various industries and the Corporation and to keep informed of all proposed future shipments. In general, he is our contact man.

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